United States Court of Appeals

for the Second Circuit

APPENDIX

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74-2224

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United States Court of Appeals

For the Second Circuit

DOREEN RAPPAPORT, DESMOND CALLAN, M.D., CAROLA DIBBELL and ROBERT CHRISTGAU, for themselves and others similarly situated,

Appellants,

-against-

HERMAN KATZ, individually and as Clerk of the City of New York,

Appellee,

UNITED STATES COURT OF APPEALS
FILED
DEC 2 1974
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JOINT APPENDIX

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PAGINATION AS IN ORIGINAL COPY

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DOREEN RAPPAPORT, DESMOND CALLAN, M.D., CAROLA DIBBELL and ROBERT CHRISTGAU for themselves and all others similarly situated,

Plaintiffs,

v.

HERMAN KATZ, individually and as Clerk of the City of New York,

Defendant.

DOCKET ENTRIES

Complaint, Filed January 15, 1974

Amended Complaint, Filed February 1, 1974

Answer

Notice of Motion to Settle Class and Affidavit of Eve Cary, Dated April 1, 1974

Memorandum in Support of Motion, April 1, 1974

Affidavit of Donald Moore

Affidavit of Susan Israel

Affidavit in Opposition to Motion

Memorandum in Support of Affidavit

Opinion of Judge Pollack, May 1, 1974

Deposition of Herman Katz, March 20, 1974

Motion for Partial Summary Judgement, Filed June 25, 1974

Memorandum in Support of Motion

Affidavit in Opposition to Motion

Memorandum in Support of Affidavit

Opinion of Judge Pollack

Notice of Appeal

Clerk's Certificate

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DOREEN RAPPAPORT, DESMOND CALLAN, M.D., CAROLA DIBBELL and ROBERT CHRISTGAU for themselves and all others similarly situated,

Plaintiffs

-against-

HERMAN KATZ, individually and as Clerk of the City of New York,

Defendant.

AMENDED COMPLAINT

74 Civ. 287

I. JURISDICTION

1. The jurisdiction of this court is invoked under Title 28 U.S.C. §§1331, 1343 and 2201 et seq., this suit being authorized by the United States Constitution and Title 42 U.S.C. §1983. This is an action for a declaratory judgment and an injunction and money damages to redress the past deprivation and prevent the future deprivation by Defendant and his agents, acting under color of State law, statute, ordinance, regulation, custom and usage, of rights, privileges, and immunities secured by the First, Fourth, Ninth and Fourteenth Amendments to the United States Constitution.

II. PARTIES

2. Plaintiff Doreen Rappaport is an adult citizen of the State of New York. She was married by an agent of Defendant Katz at the Manhattan office of the New York City Clerk on November 2, 1973 to Plaintiff Desmond Callan.

3. Plaintiff Desmond Callan, M.D., is an adult citizen in the State of New York. He was married to Plaintiff Doreen Rappaport on November 2, 1973 by an agent of Defendant Katz at the Manhattan Office of the New York City Clerk.

4. Plaintiff Carola Dibbell is an adult citizen of the State of New York. She is engaged to marry Plaintiff Robert Christgau.

5. Plaintiff Robert Christgau is an adult citizen of the State of New York. He is engaged to marry Plaintiff Carola Dibbell.

6. Defendant Herman Katz is the Clerk of the City of New York.

CLASS ACTION ALLEGATIONS

7. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on their own behalf and on behalf of all persons who wish and are legally entitled to be married by the Clerk of the City of New York or by his agents.

8. The class is so numerous that joinder of all its members as plaintiffs herein would be impractical.

9. There are questions of fact and of law common to the class. Plaintiffs will fairly and adequately protect the interests of the class.

10. Defendant Katz has promulgated and acted pursuant to regulations applicable to the class, thereby making appropriate final injunctive relief and declaratory relief with respect to the class.

11. Prosecution of separate actions by individual members of the class would create a risk of:

a) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for defendant Katz; and

b) adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudication or would substantially impair or impede their ability to protect their interests.

12. The questions of law and fact common to the class predominate over any questions affecting individual members and class action is superior to other available methods for a fair and efficient adjudication of the controversy. Since there is no conflict among the interests of the class, members have no interest in individually controlling the prosecution of separate actions. This court is a desirable forum in which to concentrate the litigation of the claims of the class since it has the power to hear all the claims and to grant appropriate relief.

FACTUAL BACKGROUND

13. Defendant Herman Katz, as Clerk of the City of New York, is authorized by Section 11 of the New York Domestic Relations Law to solemnize marriages.

14. Section 11-a of the Domestic Relations Law authorizes the Clerk of a City of the first class of over one million inhabitants to designate in writing any of his deputies or not more than four from among the permanent members of his staff to

perform marriage ceremonies. On information and belief Defendant Katz has authorized such persons to perform marriage ceremonies.

15. §11 of the New York Domestic Relations Law provides that no marriage in New York State is valid unless solemnized.

16. Acting under color of state law Defendant Katz has promulgated regulations governing the solemnization of marriages by the City Clerk and his agents.

17. Among these regulations are two which provide:

> "9) Every couple should be properly attired, the bride must wear a dress or skirt and blouse -- no slacks -- and the groom must wear a coat and tie."
>
> "10) One or two rings must be exchanged"

18. Plaintiff Rappaport became engaged to marry Plaintiff Callan in July of 1973. She began preparing for her marriage shortly thereafter. During a trip to Paris, France in September 1973, she bought a green velvet pants suit costing approximately $120.00 and a silk blouse to go with it costing approximately $20.00. In New York she bought shoes to match costing approximately $20.00. She bought all of these articles specifically to wear to her wedding and so described her new clothing to her friends and family. Her fiance, Plaintiff Callan, helped her choose the suit and wished her to wear it at their wedding. A photograph of plaintiff wearing the outfit is annexed hereto as Exhibit A. In October, 1973, Plaintiffs Rappaport and Callan invited their immediate families and several close friends to their marriage ceremony to be performed by the City Clerk or his agent

on November 2, 1973 at the City Clerk's Office Chapel. Included among the guests was a professional photographer to take pictures of the wedding. Plaintiffs also ordered flowers for themselves and for other members of the wedding party and made reservations for a post-wedding luncheon for twenty-five persons in a private room at Marbona's Restaurant at 184 Grand Street, New York, N.Y.

19. On October 26, 1973 Plaintiffs Rappaport and Callan went to the marriage license bureau at City Hall, which is under the jurisdiction of Defendant Katz, to obtain their marriage license. Having obtained the license it occurred to Plaintiff Rappaport that she should make sure that there would be enough room in the City Hall chapel for the people who had been invited to the ceremony, and she inquired of the secretary at the marriage license bureau where she should go to find out the permissible number of guests. The secretary then gave Plaintiff a copy of the regulations, and for the first time Plaintiff was apprised of the restrictions on dress at wedding ceremonies performed by the City Clerk and his agents at City Hall.

20. Plaintiff Rappaport then proceeded to Defendant Katz' office and asked his secretary if Plaintiff might speak with Defendant Katz. The secretary asked why Plaintiff wished to see Defendant Katz and upon being told the reason, she stated that the no-pants regulation was in force and that pants would be improper for the wedding ceremony. Upon Plaintiff's repeated request, however, the secretary consented to arrange an appointment for her with Defendant Katz. Plaintiff left her telephone

number with the secretary on that occasion and on several others when she called to find out whether the appointment had been arranged. Defendant Katz did not return Plaintiff's repeated telephone calls although on information and belief he received her messages and was aware of the subject Plaintiff wished to discuss with him.

21. Plaintiff had neither time nor desire to buy an entirely new outfit in the few days remaining before her marriage. She does not customarily spend as much money on her clothes as she spent on her pants suit and accessories and had done so on this occasion only as a special wedding splurge. She did not feel it was right to splurge a second time nor did she wish to wear old clothes or buy a less expensive, more ordinary outfit for her wedding, particularly as she liked her new suit a great deal and had told her friends and family about it. Moreover, she did not believe that when city officials saw her outfit they would consider it to be inappropriate within the meaning of regulation "9", in light of the fact that today pants are accepted attire for women not only in offices, restaurants and other public places, but also on formal occasions. On the contrary it was tasteful, elegant, dignified, chic and pretty. Not wishing to risk being sent home from her own wedding in front of her groom, family and friends, to change her clothes, however, Plaintiff selected from her wardrobe a skirt to bring with her. The skirt was made of

green hand-knitted material which matched her jacket more closely than any other skirt she owned. It was, however, a different shade of green and made of different material than her jacket, and was far less formal than the rest of her outfit. Because the skirt was several years old and styles had changed, it had to be lengthened. There was no time to have the skirt altered professionally, so Plaintiff had to sew it herself, which she was not proficient at doing. Hand-knitted material is difficult to sew and the hem was bulky and made the skirt hang awkwardly. Further, Plaintiff did not possess a steam iron and was unable entirely to press out the fold where the old hem had been. Plaintiff did the best she could, but still hoped that she would not be required to change her planned attire.

22. On November 2, 1973 Plaintiff, dressed in her new velvet suit, carrying her skirt, went to City Hall with her groom, Plaintiff Callan, and their families and friends. Upon entering the City Clerk's office Plaintiffs went to sign the registry book as required. Plaintiff Callan signed the register, but when Plaintiff Rappaport took the pen to sign her name a clerk said to her in a loud voice, "Honey, you'd better change into a skirt if you want to get married." Plaintiff replied to the clerk that she was not his honey, but not wishing to spoil the occasion any further with an unpleasant argument, she retired to a rest room and changed into her ill-fitting, unmatching skirt. She then signed the register and the ceremony took place.

23. Plaintiff was so embarrassed by her appearance that she requested the photographer not to take any long distance pictures of the wedding ceremony, as she had wished to have him do, but only close-ups of their faces which would not show the skirt. Immediately after the ceremony, Plaintiff changed back into her pants for pictures and for her wedding luncheon.

24. Plaintiff Carola Dibbell and Plaintiff Robert Christgau have not yet set a date for their wedding but they plan to be married during this calendar year. However, as neither of them is a member of a religious congregation, when they marry they plan to have their wedding ceremony performed by Defendant Katz or his agent at City Hall.

25. Plaintiffs Dibbell and Christgau have not yet decided what they wish to wear to their wedding, but they do want their wedding outfits to be a political expression of their views on the equality of the roles of husband and wife in marriage. They feel sure that whatever they decide to wear will not be permissible under Defendant Katz' regulations. Plaintiff Dibbell very rarely wears a skirt and is sure that she will want to wear pants at her wedding. Plaintiffs have decided that they do not wish to exchange either one or two rings.

CAUSES OF ACTION

26. At all times relevant herein Defendant Katz was acting under color of state law pursuant to his authority as Clerk of the City of New York.

27. At all times relevant herein the agents of Defendant Katz were acting pursuant to his instructions and authority.

28. Defendant Katz' willful, malicious, wanton and unjustified refusal to allow Plaintiff Rappaport to dress as she and her fiance, Plaintiff Callan, saw fit at their own wedding violated the Constitutional rights of both plaintiffs by forcing them to choose between their statutory right to be married by the City Clerk or his agent and their fundamental rights to marry, to be free of unwarranted governmental intrusion on their privacy, and to free expression. No public interest, compelling or otherwise, justifies Defendant Katz' regulation.

29. Upon information and belief, other persons have in the past attempted to wear other than the dress required by Defendant Katz' regulations, and Defendant Katz has been aware for some time of the continuing controversy surrounding the dress regulations.

30. As a result of the aforementioned acts of Defendant Katz, Plaintiffs Rappaport and Callan have suffered mental anguish, embarrassment and humiliation before their families and friends and the diminishment of the dignity and joyousness of their marriage ceremony.

31. Defendant Katz has publicly stated that he intends to continue regulating the dress of persons wishing to be married by the City Clerk and requiring the exchange of a ring or rings, thus maliciously, willfully, wantonly and unjustifiably violating the Constitutional rights of Plaintiffs Dibbell and Christgau and the class they represent, to marry, to express their beliefs, and to be free of unwarranted government intrusion on

their privacy and their statutory right to be married by the City Clerk.

WHEREFORE, Plaintiffs respectfully request:

a) That this action may be maintained as a class action;

b) Compensatory damages of $200.00 and punitive damages of $500.00 for Plaintiffs Rappaport and Callan;

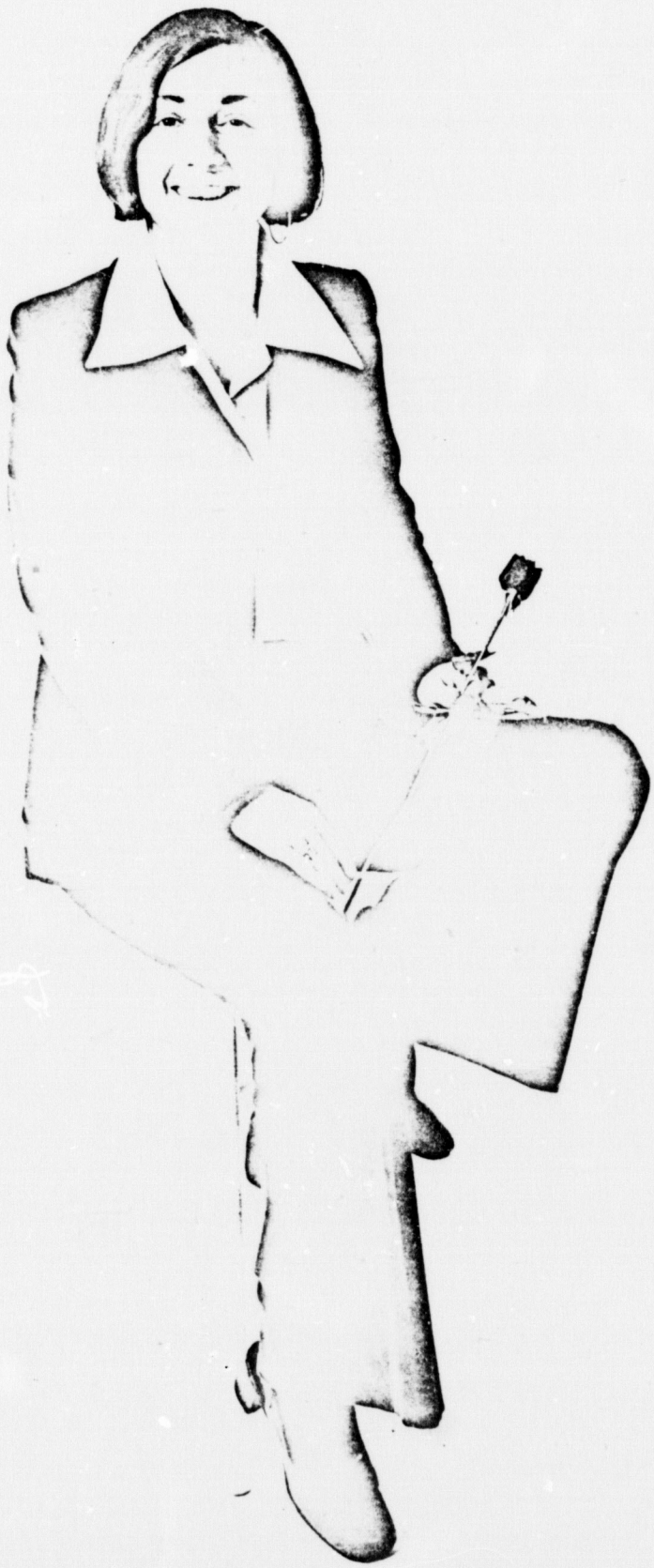
c) A judgment declaring regulations promulgated by Defendant Katz prescribing dress and the exchange of a ring or rings violate the Constitutional rights of persons wishing to be married by Defendant Katz and his agents at City Hall;

d) A preliminary and permanent injunction against the continued enforcement of Defendant Katz' dress and ring exchange regulations;

e) The costs of this action and other and further relief as this court finds just and proper.

Eve Cary

EVE CARY
BRUCE J. ENNIS
Attorneys for Plaintiffs
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New York, New York 10011
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DOREEN RAPPAPORT, DESMOND CALLAN, M. D., CAROL DIEBEL and ROBERT CHRISTGAU for themselves and all others similarly situated,	
Plaintiffs	74-CIVIL-287
-against-	JUDGE POLLACK
HERMAN KATZ, individually and as Clerk of the City of New York,	ANSWER
Defendant.	

Defendant CITY CLERK HERMAN KATZ for his answer to the amended complaint:

I. JURISDICTION

I. Denies that this Honorable Court has jurisdiction of the subject matter alleged in paragraph I. of the amended complaint and denies that plaintiffs have been damaged or deprived or may be deprived in the future of any "rights, privileges, and immunities" claimed to be secured to them by the United States Constitution.

II. PARTIES

II. Admits that a staff member of the Defendant City Clerk solemnized the rites of matrimony between plaintiffs Doreen Rappaport and Dr. Desmond Callan on November 2, 1973 at the Manhattan Municipal Building and that he is the CITY CLERK of THE CITY OF NEW YORK but denies he has any knowledge or information sufficient to form a belief of the other allegations contained in paragrayhs numbered 2, 3, 4 and 5 of the amended complaint.

CLASS ACTION ALLEGATIONS

III. Without qualifying that there is an absence of jurisdiction in this Honorable Court, Defendant agrees that a class action is the desirable forum for an adjudication that the amended complaint should be dismissed and the action rejected as set forth in paragraph I. of this answer, and for reasons amplified below, and otherwise denies the allegations contained in paragraphs of the amended complaint numbered "7" to "12" inclusive.

PLAINTIFF'S FACTUAL BACKGROUND

IV. Admits that he as City Clerk is authorized by Sections 11 and 11-a of the Domestic Relations Law of New York State to solemnize and perform marriage ceremonies and designate deputies and staff members to do so, but denies the amended complaint allegation in paragraph 15, that "no marriage in New York State is valid unless solemnized", such exception is described below.

V. Admits that he has promulgated appropriate dress guidelines for marriage ceremonies and solemnization performances by the City Clerk and his deputies in accordance with the provisions of the Domestic Relations Law of New York State and such guidelines are set forth below and annexed as Exhibit A.

VI. Defendant denies he has any knowledge or information sufficient to perform a belief as to the allegations contained in the amended complaint paragraphs marked 18, 19, 20, 21, 22, 23, 24 and 25.

VII. Denies each and every allegation contained in paragraphs of the amended complaint numbered 28, 29, 30 and 31.

DEFENDANT CITY CLERK Avers;

FACTUAL BACKGROUND OF MARRIAGE SOLEMNIZATION IN THE CITY CLERK'S OFFICES

VIII. The Domestic Relations Law of New York State is captioned "SOLEMNIZATION, PROOF AND EFFECT OF MARRIAGE" and from Section 10 to Section 25 inclusive mandates the obligations of all who participate in Marriage activity from the license applicants, physicians certificate, clergymen, judge or justices, city and town clerks, mayors, Ethical Culture leaders, so that a valid marriage is effected.

IX. In 1916 the City Clerk of The City of New York was empowered and authorized to SOLEMNIZE THE RITES OF MATRIMONY AND PERFORM MARRIAGE CEREMONIES.

X. The City of New York has spent hundreds of thousands of dollars in decorating and maintaining appropriately, separate chapels for such solemnizations in each of the five boroughs of the City, in keeping with the solemnity attached to the nature of the marriage obligations publicly assumed by every couple in said chapels.

XI. During these six decades couples who sought the solemnization service of the City Clerk invariably appeared in appropriate clothes for this single most important event in their lives. They appeared in coat and tie, skirt and blouse, with rings or other tokens of exchange for the declaration of their

vows of marriage. Many appeared with formal bridal gowns and tuxedos and with flowers and bridal attendants in formal attire. No rules were published. It was and it is assumed that all would appear appropriately attired. It would have been presumptuous to advise citizens of New York of such commonly accepted details of wedding clothes or attire.

XII. Between the years 1960 and 1964 a few scattering couples appeared for marriage rites without ties or coats, opened chested, zippered jackets and sweaters, nondescript and dirty pants, brides' in colored loose pajama outfits with no blouse and with only a halter, jeans marked with graffiti in front and rear, shreaded cuffs on their denim pants, spotted slacks, plaid trousers, shorts and other nondescript apparel and without rings.

XIII. When the City Clerk and his staff advised such men and women that their clothes demonstrated the absence of respect and recognition of their new, proposed family status, the reply was that no one ever advised them of what would be proper clothes. It became necessary for the City Clerk for the first time, about 1965, to issue simple and practical directions among other matters, of what would be considered acceptable clothes for the City Clerk to participate in and perform his role in the solemnization of marriage.

XIV. The current guidelines are set forth in schedule A annexed hereto and made a part hereof.

XV. In 1973 the offices of the City Clerk solemnized twenty thousand marriages out of the seventy-two thousand licenses issued.

XVI. In the five borough chapels, it is most usual for many couples to congregate in the waiting rooms to be called for individual performances. There is the natural opportunity for such couples to observe whether the City and the State deems their proposed marriage status as an important and solemn event, or a routine and ordinary bureau counter dispensing event. The City Clerk as representative of the City is obligated to make the ceremony meaningful and symbolical of the new status of the man and woman.

XVII. For the very few who sometimes for whatever reasons have forgotten, overlooked or been neglectful of the directions in Exhibit A, copy of which is delivered with each license, each of the Chapels is provided with coats, ties and rings, for use of the parties at such ceremonies.

No one has ever been refused the Service of marriage performance by reason of failure to own a ring ---- for any token such as watches, lockets or witnesses rings have been substituted for the ring, to comply with the cardinal rule that all contracts "require" visible exchange of physical consideration, rather than their responses to questions posed by officiants.

XVIII. The marriage performance fee fixed by the Council of The City of New York was two dollars, now is three dollars and very shortly will be five dollars ---- a nominal and insignificant fee.

XIX. Couples who select their special ethnic, ancestral or national dress in which to be married, such as a dashiki, a kimona with obi or a cheongsam or service persons in uniform are served and have been served by the City Clerk as consonant with the coat, tie, skirt and blouse and dress guid-

lines

XX. The issues posed by the amended complaint is NOT the requirement of ring or the exchange of rings. The sole issue is the demand of the City Clerk that applicants for his participation in solemnization be attired, the bride in a blouse and skirt and the groom in a coat and tie as the minimum.

AS A FIRST AFFIRMATIVE AND SEPARATE DEFENSE TO PLAINTIFFS CAUSES OF ACTION, DEFENDANT CITY CLERK ALLEGES:

XXI. Marriage solemnization procedures and the effect of marriage contracts and status are exclusively within the sovereign jurisdiction of each of the States of the United States.

XXII. The officers and persons authorized to perform the rites of marriage and solemnization in each State are governed exclusively by the legislature and the laws of each State.

XXIII. The determination of the forms, modes, ritual and sufficiency of the ceremony of solemnization and the attributes of an effective marriage ceremony are exclusively within the jurisdiction of each of the several States and forever reserved to the States and not within Federal jurisdiction or authority.

XXIV. The issue respecting form, ritual, conduct and detail by officiants selected by the State to perform solemnizations and rites of matrimony is not within the jurisdiction of the Federal Courts and has been reserved to the State and to the local communities within such State.

FOR A SECOND AFFIRMATIVE AND SEPARATE DEFENSE
TO PLAINTIFFS CAUSES OF ACTION,
DEFENDANT CITY CLERK ALLEGES

XXV. The Domestic Relations Law of New York State sets forth in Section 11 by whom a marriage must be solemnized.

XXVI. Clergymen, justices, mayors, the City Clerk of The City of New York and others as public officers elected or appointed by their respective communities are privileged to solemnize marriage performances and the rites of matrimony.

XXVII. As such active and necessary participants in solemnization they are empowered to establish their own details and order of decorum and specify compliance to assure their personal participation in such solemnization exercise.

XXVIII. Applicants seeking such solemnization by the above public officers or clergymen must comply with such officiants directions.

XXIX. Applicants for marriage status who reject solemnization as such by the named category of marriage officiants or prefer not to comply with the directions of such officers or clergymen may as permitted by the Domestic Relations Law, Section 11, Subdivision 4 effect the same result, by preparing a written contract after receiving a license, go to any Judge of a Court of Record with two adult witnesses and procure the acknowledgment of their signatures by the Judge or Justice without any formal solemnization and the Judge does not fill in the statutory form showing any solemnization of the rites of matrimony.

XXX. Upon information and belief, contracts of marriage, to avoid the solemnization or rites of matrimony, were in vogue and popular during the World War II years.

XXXI. Defendant as City Clerk has voluntarily assisted couples in such contract marriages where there was a rejection of the solemnization phase as such.

XXXII. There is no justiciable issue for this Honorable Court to determine, declaratory or otherwise, assuming this Court has jurisdiction of any matrimonial solemnization matters.

FOR A THIRD AFFIRMATIVE AND SEPARATE DEFENSE TO PLAINTIFFS CAUSES OF ACTION, DEFENDANT CITY CLERK ALLEGES

XXXIII. Every marriage officiant authorized by the Domestic Relations Law to perform rites of matrimony is obligated to assure himself or herself that the parties solemnly take each other as husband and wife.

There is a very sensitive public interest in every marriage. The participation by the State appointed officers is to assure that the couples exhibit a similar regard for the solemnity of the exchange of vows.

XXXIV. The determination by the Defendant City Clerk that pants worn by the bride reduces and negates the solemnity of the marriage performance is a reasonable exercise of discretion and not arbitrary. Such determination is practical and understandable by all.

XXXV. If there is an abuse of discretion by the City Clerk, a public officer of The City of New York, the Council of The City of New York could by its resolution direct the City Clerk to accept 'pants' in all its cult phases and request him to cancel his regulation. This matter is a community matter and should be determined by community self-interest.

WHEREFORE, the Defendant demands judgment against the plaintiffs dismissing the complaint with costs and disbursements.

ADRIAN P. BURKE
Corporation Counsel
Attorney for the Defendant
Municipal Building
New York, New York 10007
(212) 566-4515

By: _____
IRWIN L. HERZOG

** Wednesday hours are extended from - 5:30 P.M. to 6:30 P.M.

LEASE REGISTER FOR MARRIAGE CEREMONIES 30 MINUTES BEFORE THE ABOVE CLOSINGS.

. APPOINTMENTS ARE NOT REQUIRED.

. THE FEE IS $3.00.

. WHERE THE GROOM AND BRIDE IS BETWEEN 18 AND 21 YEARS OF AGE THE PARENTS OF THE GROOM OR BRIDE MUST ATTEND THE MARRIAGE CEREMONY. PLEASE SUBMIT PROOF OF AGE AGAIN.

. A COUPLE BETWEEN THE AGES OF 18 AND 21 SHOULD HAVE AT LEAST ONE WITNESS IN ADDITION TO THEIR PARENTS. EVERY COUPLE MUST ARRANGE TO HAVE SOMEONE WITNESS THE CEREMONY, SUCH WITNESS MUST BE 21 OR OLDER.

. EVERY CEREMONY IS INDIVIDUAL AND PRIVATE AND GUEST MAY BE INVITED.

. EVERY COUPLE SHOULD BE PROPERLY ATTIRED. THE BRIDE MUST WEAR A DRESS OR SKIRT AND BLOUSE -- NO SLACKS --. THE GROOM MUST WEAR A COAT AND TIE.

. ONE OR TWO RINGS MUST BE EXCHANGED AT THE CIVIL CEREMONY.

0. PLEASE DO NOT THROW RICE OR OTHER LITTER IN THE HALLWAY OR ON THE STAIRS. RICE IS HAZARDOUS ON THE MARBLE FLOORS AND CONCRETE. PLEASE WAIT UNTIL YOUR PARTY LEAVES THE BUILDING.

* * * * * * *

--- SOLEMNIZACION DE MATRIMONIOS PERFORMADAS POR EL CITY CLERK

STA OFICINA ESTA ABIERTA PARA MATRIMONIOS CIVILES SOLAMENTE.

L HORARIO ES: LUNES A VIERNES - 9:30 A.M. A 11:30 A.M. Y
- 1:00 P.M. A 5:30 P.M.
XTENDIDO EL HORARIO PARA LOS MIERCOLES - 3:30 P.M. A 6:30 P.M.

ESTE PRESENTE MEDIA HORA ANTES DE CERRAR

O SE REQUIERE CITA NINGUNA.

A CUOTA ES DE $3.00 POR CEREMONIA.

I LA PAREJA ESTAN ENTRE LAS EDADES DE 18 A 21 ANOS, LOS PADRES DE AMBOS IENEN QUE ESTAR PRESENTE. POR FAVOR PRESENTAR PRUEBA OTRA VEZ.

ODA PAREJA ENTRE 18 Y 21 ANOS DEBEN TENER UN TESTIGO MAYOR DE 21 ANOS, PARTE DE LOS PADRES.

ADA CEREMONIA ES PRIVADA Y PUEDEN TRAER INVITADOS.

L NOVIO Y LA NOVIA DEBEN ESTAR VESTIDOS APROPIADAMENTE, LA NOVIA DEBE USA... N VESTIDO O BLUSA Y FALDA -- NO PANTALONES; EL NOVIO DEBE USAR CORBATA Y ACO.

N ANILLO O DOS SERAN NECESARIO PARA CADA CEREMONIA.

NO SE PUEDE TIRAR ARROZ EN LOS PASILLOS O ESCALERAS. ES PELIGROSO EN EL PISO Y LAS ESCALERAS. ESPERE A QUE SALGA AFUERA. POR FAVOR NO ENSUCIE.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

DOREEN RAPPAPORT, DESMOND CALLAN, M.D., CAROLA DIBBELL and ROBERT CHRISTGAU for themselves and all others similarly situated,

Plaintiffs

-against-

HERMAN KATZ, individually and as Clerk of the City of New York,

Defendant.

----------x

NOTICE OF MOTION

Civ. No. 287

S I R S :

PLEASE TAKE NOTICE that pursuant to Rule 23(c)(1) of Federal Rules of Civil Procedure and Rule 11A(c) of the Civil Rules for the Southern and Eastern Districts, plaintiffs will move this Court, on April 19, 1974, at 2:00 p.m., or as soon thereafter as counsel may be heard, for an order determining that this action may be maintained as a class action.

Dated: New York, New York
April 1, 1974

Yours, etc.

Eve Cary

Eve Cary
84 Fifth Avenue
New York, New York 10011
(212) 924-7900

Attorney for Plaintiffs

To: Erwin Herzog, Esq.
Assistant Corporation Counsel
Municipal Building
New York, New York

STATE OF NEW YORK

ss.:

COUNTY OF NEW YORK

EVE CARY, being duly sworn, deposes and says:

1. I am an attorney admitted to practice before the bar of this court, with offices at the New York Civil Liberties Union, 84 Fifth Avenue, New York, N.Y. and I am one of the attorneys for plaintiffs herein. I make this affidavit in support of plaintiffs' motion for an order determining that this suit may be maintained as a class action.

2. As a result of numerous complaints received by the New York Civil Liberties Union in the past two years, plaintiffs' attorneys have determined that a large class exists, the limits of which are difficult to define, of persons who have been unable to dress in the manner they would have liked for their weddings when they have chosen to be married at City Hall, and in many instances have been sent away from their own weddings to change their clothes. Similarly persons who have not wished to exchange wedding rings have been forced to do so.

3. Plaintiffs believe that they have been the victims of unjustified state regulation of their personal appearance and beliefs and that defendant's regulations are directed, not at them individually, but rather uniformly at all persons who wish to be married by defendant and his agents. For this reason, and

for others discussed at length in the accompanying memorandum of law, plaintiffs wish this suit to proceed as a class action.

Sworn to before me this
2nd day of April, 1974

Eve Cary

NOTARY PUBLIC

AFFIDAVIT

STATE OF CONNECTICUT)
: SS:
COUNTY OF Litchfield)

SUSAN ISRAEL, being duly sworn deposes and says:

1. I am over eighteen years of age and I reside at East Street, Lakeville, Connecticut.

2. On November 5, 1970, I was married by an agent of the New York City Clerk in Bronx County, New York.

3. When I applied for a marriage license I was not told that I would not be permitted to wear pants at my wedding ceremony, nor was my husband told that he must wear a jacket and tie.

4. When my husband and I arrived at the office of the City Clerk to be married we were told we were not "properly attired". We had come from out of town to be married and had no other clothes with us.

5. My husband borrowed an ill-fitting jacket and tie from a strange man in the office. The clerk told me that if we wanted to be married there, I would have to take off my pants.

6. Although I found this to be extremely humiliating, I took off my pants (my top was just long enough to cover my thighs) because at that point I just wanted to get the ceremony over with.

7. As a result of the no-pants regulation, our wedding day was changed from a joyous and dignified occasion into an embarrassing, humiliating and degrading affair which I will

always remember with discomfort and unhappiness.

:

Sworn to before me this 11 day of April, 1974.

Susan Israel
SUSAN ISRAEL

Notary Public
My Commission expires 4/1/79

SOUTHERN DISTRICT OF NEW YORK

DOREEN RAPPAPORT, DESMOND CALLAN, M.D., CAROLA DIBBELL and ROBERT CHRISTGAU, for themselves and all others similarly situated,

Plaintiffs

-against-

HERMAN KATZ, individually and as Clerk of the City of New York,

Defendant

U.S. DISTRICT COURT
FILED
MAY 1 1970
S. D. OF N. Y.

AFFIDAVIT

Civ. No. 287
Judge Pollack

State of New York) ss.:
County of New York)

DONALD MOORE, being duly sworn, deposes and says:

1. I reside at 290 East Second Street, New York, N.Y.

2. I planned to get married on February 19, 1970 and my wife and I invited a number of guests to the ceremony which we had decided to have performed at City Hall by the City Clerk. A party was planned to take place after the ceremony.

3. I am a Black man and I planned to wear to my wedding a dashiki, which is a traditional African garment. I like to wear a dashiki because I feel that it a symbol of black culture that is relevant to me and not part of a white, alien culture that I believe is imposed on black people in this country. I especially wanted to wear a dashiki at my wedding because a wedding is an important, symbolic occasion and I wanted it to be meaningful and relevant to me and my wife in every way.

4. When we arrived at the City Clerk's office, I was told by an employee that I was not appropriately dressed and could not be married until I had changed into a jacket and tie. When I protested, Herman Katz, the City Clerk, came out of his office and reaffirmed what the employee had told me, which was that he would not perform the cere-

mony until I had changed my clothes.

5. Neither my wife nor I believed that I should compromise my beliefs by changing out of my traditional dress and so we left the clerk's office. It was too late to find someone else to perform the ceremony at that time and so we were not married until five days later on February 24th.

6. The forced delay of our wedding ceremony caused my wife and me great embarrassment, and humiliation as well as inconvenience and expense. I felt extremely unhappy and degraded at being told that I did not know how to dress on my own wedding day in front of my family and friends. I especially was angry at being told by a white person that clothing that is significant to me as a symbol of my heritage and individuality as a black man was not good enough to be married in.

Sworn to before me this
18th day of April, 1974

NANCY RODRIGUEZ
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-4[illegible]
Qualified in New York County
Term Expires March 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DOREEN RAPPAPORT, DESMOND CALLAN, M.D., CAROLA DIBBELL and ROBERT CHRISTGAU for themselves and all others similarly situated,

Plaintiffs

-against-

HERMAN KATZ, individually and as Clerk of the City of New York,

Defendant.

74 Civ. 287

AFFIDAVIT

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

BARRY I. BERGER, being duly sworn, deposes and says:

1. I am an assistant in the office of ADRIAN P. BURKE, Corporation Counsel of the City of New York, attorney for the defendant herein, and, as such am familiar with this matter.

2. I respectfully submit this affidavit in opposition to plaintiffs' motion to have this action maintained as a class action pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure and Local Civil Rule 11A(C).

3. The grounds of defendants' opposition is, as is more fully set forth in the memorandum of law filed herewith, the following:

a) The purported class, as defined in the complaint is impermissibly vague in that it could well include every person who, in the future, seeks to get married within New York City.

WHEREFORE, it is respectfully prayed that this Court deny plaintiffs' motion to maintain this action as a class action.

BARRY I. BERGER

Sworn to before me this
day of April, 1974.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

DOREEN RAPPAPORT, DESMOND CALLAN, M.D., CAROLA DIBBELL and ROBERT CHRISTGAU for themselves and all others similarly situated,

Plaintiffs,

v.

HERMAN KATZ, individually and as Clerk of the City of New York,

Defendant.

74 CIV. 287 (MP)

MEMORANDUM

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FILED
U.S. DISTRICT COURT
MAY 1 12 11 PM '74
S.D. OF N.Y.

APPEARANCES:

NEW YORK CIVIL LIBERTIES UNION
Attorneys for Plaintiffs
84 Fifth Avenue
New York, N.Y. 10011
By: Eve Cary, Bruce J. Ennis, Esq. of Counsel.

MAY 1 1974

ADRIAN P. BURKE
Corporation Counsel for the City of New York
Municipal Building
New York, N.Y. 10007
By: Irwin L. Herzog, Esq. of Counsel.

MILTON POLLACK, U.S. District Judge.

Milton Pollack, U.S. District Judge.

Plaintiffs seek an order pursuant to Rule 23(c)(1), Fed. R. Civ. P. and Rule 11A(c) of the Civil Rules for the Southern and Eastern Districts of New York that this action may be maintained as a class action.

Plaintiffs are four persons constituting two couples -- one married at City Hall in November 1973 and one planning to be married at City Hall within the coming year. Defendant is the Clerk of the City of New York; he supplies facilities and deputies, members of his staff, for the performance of civil weddings at the City Hall for those who have been licensed to marry.

Plaintiffs complain that certain rules which defendant has established in conjunction with his officiating at civil weddings -- namely those dealing with appropriate attire and the exchange of rings -- violate their rights to privacy and free expression guaranteed by the First, Ninth, and Fourteenth Amendments to the United States Constitution. Jurisdiction is said to be predicated upon 28 U.S.C. §§1331, 1343, and 2201 et seq., this suit allegedly being authorized by 42 U.S.C. §1983 and the Constitution itself.

Plaintiffs seek compensatory and punitive damages, as well as injunctive and declaratory relief directed against the requirements of the challenged rules for invoking defendant's officiating services.

The class that plaintiffs seek to represent is alleged to consist of "all persons who wish and are legally entitled to be married by the Clerk of the City of New York or by his agents." The requisite allegations of numerosity, commonality, typicallity, and adequacy of representation have been made in conclusory form.

Certification is sought herein under Rule 23(b)(2), which provides that an action may be maintained as a class action if

> the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

Some general observations about the necessity of a class actually being in existence prior to the certification of an action as a class action have been made by a leading treatise:

> Although not specifically mentioned in the rul. an essential prerequisite for an action under Rule 23 is that there must be a "class." Whether a class exists is a question of fact that will be determined on the basis of the circumstances of each case.... [T]he general outlines of the membership of the class must be determinable at the outset of the litigatio ... [T]he requirement that there be a class wi. not be deemed satisfied unless the description of it is sufficiently definite so that it is administratively feasible for the court to det. mine whether a particular individual is a memb. This means that the class must not be defined broadly that it encompasses individuals who ha. little connection with the claim being litiga. rather, it must be restricted to individuals are raising the same claims or defenses as the representative.... [I]f the court is persuaded that no definable class is present, it may have the class allegations stricken and allow the action to proceed on an individual basis.
>
> 7 C. Wright & A. Miller, Federal Practice and Procedure §1760, at 579-83 (1972)(footnotes omitted)(emphasis added).

Plaintiffs will not be permitted to represent class which is "too amorphous and imprecise," Price v. Skolnik, 54 F.R.D. 261, 263 (S.D.N.Y. 1971), "neither distinguishable nor definable," Langford v. Tennessee, 356 F. Supp. 1163, 1164 (W.D. Tenn. 1973)(per curiam) (three judge court). In Koehler v. Ogilvie, 53 F.R.D. 100-101 (N.D. Ill. 1971), aff'd mem., 405 U.S. 906 (1 the proposed plaintiff class consisted of all married

divorced men in the State of Illinois. Denying class action status, the three judge District Court said:

> The plaintiffs attempt to represent both men who have been divorced and those who may potentially face such action in the future, with the latter group appearing to be the great majority of the class. It is obvious that many of the currently married and unmarried men of Illinois will never sustain any contact whatsoever with the state's divorce laws. They, therefore, have no case or controversy against any of the defendants and have claims, if any at all, of a totally different nature than do the class of men who have endured the alleged discriminatory effect of the divorce laws in question. It is axiomatic that the interests of the named representatives in a class action must be co-extensive with the interests of the other members of the proposed class.... We conclude that the various members of the proposed class do not have interests co-extensive with the named plaintiffs, that the claims of the named plaintiffs are not typical of those of the proposed class, and that, for these reasons, the suit is not properly maintainable as a class action.
>
> Even apart from the above considerations, we have difficulty visualizing this suit as a proper class action. The plaintiffs name as defendants [certain public officers]. It is obvious that many of these defendants will fall into the plaintiffs' proposed class and in effect be placed in the position of suing themselves. It is clear, therefore, that the named plaintiffs have interests not wholly compatible with, but rather antagonistic to, those whom they would represent. This alone is enough to dismiss the suit as a class action.... We conclude, therefore, that this lawsuit in its present projection may not be maintained as a class action.

> Finally, a class action is unnecessary to enable an appropriate examination of the constitutionality of the Illinois divorce laws since it can be as effectively achieved in an individual or joint action as in a class action. (citations omitted). (Emphasis supplied).

Likewise, in Cunningham v. Ellington, 323 F. Supp. 1072, 1074 (W.D. Tenn. 1971)(three judge court), where the proposed class consisted of those citizens of Memphis, Tennessee, who "have been subjected to, are presently subjected to, and who will be subjected in the future" to application of the statute under attack, the Court said:

> In the instant case membership in the alleged class is neither distinguishable nor definable. Plaintiffs include in their class citizens who will be subjected in the future to the application of [the statute]. It would be impossible now to determine which people in Memphis in the future will allegedly commit felonies and flee from the scene after policemen announce their intent to arrest.

Applying these criteria to the proposed class herein, the defects in plaintiffs' formulation thereof are manifest. "All persons who wish and are legally entitled to be married" by the defendant constitute an amorphous, imprecise group which is neither distinguishable nor definable. Indeed, it is subject to change from day to day. More fundamentally, there is -- and can be -- no showing that

members of the proposed class ("all persons who wish and are legally entitled to be married") share the complaint of the named plaintiffs herein. It cannot be said that all persons seeking to be married by the defendant or his agents object to -- or are even concerned with -- his dress regulations or ring requirements. If even some persons who wish and are legally entitled to be married by the defendant approve of his regulations and seek gladly to comply therewith, the class as alleged cannot be approved for the reasons stated above.

The Court is not unaware of its powers in this area to redefine the class proposed in an appropriate manner to bring an action within Rule 23. Wright & Miller, supra, at 582-83. Without seeking to usurp the traditional role of counsel, the Court might attempt to define the class as all persons imminently seeking to be married by defendant or his agents who also object to the dress and ring rules he has promulgated. Although this would apparently narrow the hypothetical class somewhat, membership in the resultant "class" would still be incapable of ascertainment, for any such characterization would require

an inquiry into the state of mind of each particular individual.

In Chaffee v. Johnson, 229 F. Supp. 445, 448 (S.D. Miss. 1964), aff'd per curiam on other grounds, 352 F.2d 514 (5th Cir. 1965), cert. denied, 384 U.S. 956 (1966), the Court held that a class alleged to consist of "all persons who are workers for the end of discrimination and segregation in Mississippi, for the encouragement of the exercise by Negroes in Mississippi of their right to vote and to register to vote, and for the exercise and preservation of civil rights generally in Mississippi" was not a proper class, saying:

> The vague and indefinite description of the purported class depends upon the state of mind of a particular individual, rendering it difficult, if not impossible, to determine whether any given individual is within or without the alleged class. The members of a class must be capable of definite identification as being either in or out of it.

To like effect is the ruling of the Court in American Servicemen's Union v. Mitchell, 54 F.R.D. 14, 17 (D.D.C. 1972), where, confronted with a proposed class consisting of "all American citizens who have, do, or intend to advocate ideas, policies, and political positions which

are unpopular, controversial, or who otherwise dissent from the ideas, policies, and political positions predominant in American society," the Court said:

> There is no such identifiable class as a matter of law and this part of the pleading is purely atmospheric and insubstantial. Accordingly, the complaint can be considered only in terms of the separate individual claims of the named plaintiffs.

Self-evidently, any declaratory relief awarded to plaintiffs in this action would quite likely have city-wide effect. Accordingly, a class action is not required. Cf. Holt v. Brown, 336 F. Supp. 2, 6 (W.D.Ky. 1971)(mem.) (three judge court). See generally Katz v. Carte Blanche, ___ F.2d ___, ____ (3d Cir. 1974)(42 U.S.L.W. 2527).

It would be wholly inappropriate to certify this action as a class action and the motion therefor is, in all respects, denied.

SO ORDERED.

May 1st, 1974

Milton Pollack

Milton Pollack
U.S. District Judge

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

DOREEN RAPPAPORT, DESMOND CALLAN, M.D. :
CAROLA DIBBELL and ROBERT CHRISTGAU
for themselves and all others :
similarly situated,
:
Plaintiffs,
:
-against-
:
HERMAN KATZ individually and as Clerk
of the City of New York, :
Defendant. :

----------x

Examination of HERMAN KATZ taken by the Plaintiffs pursuant to Notice, at the offices of Eve Cary and Bruce J. Ennis, Esqs., 84 Fifth Avenue, New York, New York, on Wednesday, March 20, 1974, at ten o'clock in the forenoon, before Pauline G. Winslow, a Certified Shorthand Reporter and a Notary Public within and for the State of New York.

BAR ASSOCIATION REPORTING SERVICE
WILLIAM NEWROCK, CSR
36 WEST 44TH STREET
NEW YORK 36, N. Y.
MURRAY HILL 7-0363

A P P E A R A N C E S:

EVE CARY, ESQ.
-and-
BRUCE J. ENNIS, ESQ.
Attorneys for Plaintiffs
84 Fifth Avenue
New York, New York

ADRIAN P. BURKE, Corporation Counsel
Attorney for Defendant
New York, New York

BY: IRWIN L. HERZOG, ESQ.

-oOo-

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that the sealing, filing and certification of the transcript of the within examination be, and the same hereby are, waived; and that said transcript may be signed and sworn to before any Notary Public or Commissioner of Deeds with the same force and effect as if before an officer of this Court;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, are reserved to the trial of this action.

-oOo-

A92

H E R M A N K A T Z, residing at 308 East 79th Street, New York, New York, having been first duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY

MS. CARY:

Q Mr. Katz, what is your present job?

A I am City Clerk of the City of New York.

Q How long have you had that job?

A Fifteen years.

Q Can you give us a brief description of the duties of City Clerk?

A It's contained in the Charter.

Q Well --

A I prefer to have the Charter read. I am not the exponent nor the authority for the Charter.

Q Can you give us just for the purpose of this deposition some description of your duties in regard to marriage?

A I prefer not to mention that. The statutes speak for themselves.

Q So you do everything that the statute says

A I attempt to comply with the statute.

Q Where do you live?

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A 308 East 79th Street.

Q To start off, could you give a general description of what the purposes -- the two regulations in question in our suit are, the dress regulation and the regulation requiring exchange of either one or two rings.

I wonder, first, if you could give us a general statement about what the purpose of the dress regulation is.

A As stated --

MR. HERZOG: Let the record show that the regulations are part of the pleadings and I have it incorporated into the answer.

Q I don't think the one in question -- I believe it's regulation number -- well, number 8, that every couple should be properly attired, the bride must wear a dress or skirt and blouse, no slacks, the groom must wear a coat and tie, what is the purpose of that?

A To assure a certain amount of responsibility in the couple to know what they are doing, that they know what they are doing. They are entering into an important social state of matrimony. All of which we have set forth in the answer.

Q Are there any other reasons? Would you

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say that's the entire reason?

A No, it's a whole history of matrimony, the entire basis of civilization's regard for persons deciding to become man and wife.

Society has an obligation to at least advise a man and woman who seek matrimony that ~~this is an important~~ irreversible step.

And my desire is to implant as my requirement under the law in its solemnization -- and I am given the obligation to perform the rights of matrimony -- to assure that I am convinced also, as well as society is convinced, that these folks know what they are doing, that it is not simply a supermarket program of walking in and walking out with a diploma.

Of course this doesn't restrict me from my amplifying on anything I do? Some things I can't explain at this particular moment.

But I hope I am not restricted in any fashion to amplifying it anyway I please later on.

Q I think what we are trying to do now is to pin down as closely as possible the reason for regulation.

A Domestic relations law, in my mind, sufficiently portrays what is the general purpose and my purpose in

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following and in conforming with the law.

Q To go on to the requirement that rings be exchanged --

A Rings being changed, as the answer indicates, is not a vital sine qua non with respect to my performing the marriage.

It's a reminder to folks who have been asking a lot of questions as to whether a ring is required, a ring is required.

The rule that any lawyer of worth knows is that a contract is made by the passage of consideration. openly performed, it's not an oral statement against an oral statement.

So through tradition centuries old, something was exchanged. So the ring personifies and symbolizes that particular kind of exchange and since every society and civilization uses that kind of token, I suggested it be also done with the City of New York Administration of solemnization.

It shouldn't be forgotten also that if a party comes in without a ring, as the answer indicates, we go ahead with it. Nobody has ever been refused solemnization by reason of the absence of a ring in his pocket.

We have rings available so that symbolically in

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compliance with the fundamental every lawyer knows the contract law, that something has to be exchanged, we give them a ring and they are very happy to get it because they either forget or in addition to that we many times have some witnesses come in with rings and we have them, as many times happens, in any of these solemnizations, and the matrimonial matters we have them use their friends' rings.

That is not a specific issue involved here because it's more or less a reminder to the folks to come in with something.

Many times we have had them exchange their watches, just physically making some statement or some change of consideration so that in addition to the words that they mouth their acceptance of one another, a husband and wife, they more or less seal it by a ring.

Q I have several questions about this.

Are you saying that a marriage would not be valid unless some physical consideration were exchanged

A I wouldn't be stupid to suggest that would be valid or invalid.

I only say I comply with tradition over the years and the centuries old requirement of contract laws, specifically fundamental contract laws, it requires an

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exchange in order to signify the contract.

The marriage compact is a contract and since everything is a verbiage, the questions are answered verbally, and there is no other method of indicating to the public and themselves Blackstone on Littleton with respect to contract law that something must be exchanged and the ring represents that over the years.

So that anything -- in my offices in the five boroughs, they have exchanged with one another, lockets, somebody else's watches, anything to signify physically and objectively that a contract is being performed, wholly unrelated to the other question.

Q Could couples exchange money?

A Yes, they could if they so selected, but money is a kind of thing that they hold in their hands, it isn't as much visible as a ring being placed upon a bride's or groom's finger.

Q I am sure you are not saying that the exchange is symbolic or necessary.

A I don't know if it's symbolic. I only know that civilization from the day Adam and Eve started, there was an exchange physically made, some kind of outside objective statement, like the breaking of a pepper corn

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when folks used to exchange land years and years ago, it meant something additional, not only stamping on the ground but doing something outside to show consideration.

Q But I still don't feel I have gotten an answer to my question.

A I reject the idea it's symbolic. I think it's required under the contract law.

Q Are you an anthropologist?

A Hell, no.

Q So you don't really know if every society requires an exchange.

A I presume to be -- you are insulting me -- I am an educated person.

I know that marriage and matrimony is a solemn event in society.

I don't have to be an anthropologist to determine that marriage is or is not a solemn event in anybody's life and what society commands or demands of people getting married.

Q I wasn't meaning to insult you.

A I resent being asked whether I am an anthropologist just as I would resent your asking if I am an economist. I am here as City Clerk.

Q You said every society has required the

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exchange of consideration and it has been done since Adam and Eve.

A Herman Katz is the authority and all the books indicate the same.

I read and I expect to read the same books I do and I have read that in the books.

And any lawyer knows he can't go to law school without finding out what a contract is.

The best suggestion I offer is to go to Willisden on contracts. I have the book if you want the seven or eight volumes that I have, I can loan it to you.

Q To go back to -- to go back to where we started, you say that the purpose of the dress regulations is to show couples what they are doing.

A No purpose. I assume fundamentally that people have to be dressed in some form. That's the form.

Men are usually dressed in pants and tie and coat and women usually in skirts.

So far as my elimination of the word slacks, it pertains solely to the fact that it simply can not be objectively controlled by my deputies and others who have to enforce my regulations.

In other words, slacks have been misused in every form imaginable, so that as far

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as I am concerned, I feel that slacks are degrading to a marriage ceremony.

Q Could you explain what you mean by slacks?

A Anything like pants, anything indicating, in a sense, complete disregard of the fact that -- they come to marry, not to symbolize their political advances by what they wear.

The state is superior in requiring them to understand that they are entering into a new state and I try to follow it in that fashion because we found that slacks have been, I would say the wearing of slacks by brides have been misused and uncontrollable.

Q In what sense misused?

A As, the answer speaks for itself. I think I have sufficiently indicated in my answers what my objections are.

Q I assume you are referring to paragraph 12 of your answer in which you discussed couples appearing for marriage rites without tie or coats -- this is a quote from paragraph 12, without ties or coats, open chested, zippered jackets and sweaters, non-descript and dirty pants. Brides in colored loose pajama outfits with no blouse and with only a halter.

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Jeans marked with graffiti on front and rear, shredded cuffs on their denim pants, spotted slacks, plaid trousers, shorts and other nondescript apparel.

MR. HERZOG: And without rings.

Q Mr. Katz, I have here, it was annexed to your complaint, a photograph of plaintiff Doreen Rappaport, and she is wearing the outfit that she --

A Have we got a copy of it?

MR. HERZOG: There is one attached to the complaint but it's very poor, you really can't see it.

It's evidently a Xerox copy of the photograph and it didn't reproduce too well.

MS. CARY: I can give you another one.

I sent you an extra copy, you ought to have a regular photograph someplace. The Marshal took two weeks --

MR. HERZOG: I am not that concerned about it, believe me.

Out of mere curiosity I wanted to see what it looked like because from the picture you gave us it was hard to tell.

Besides, if you show something to my client, you should show it to me.

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Q This is a photograph of Doreen Rappaport in the suit that she chose for her wedding. I was there when the photograph was taken and I can tell you it's made out of green velvet and it has a silk blouse.

Now, to go to your answer, in that picture do you see a zippered jacket?

A I refuse to answer. The picture speaks for itself.

Zippered jacket --

MR. HERZOG: This is an examination before trial and you can't cross-examine him at this time.

If you want to get information, we are prepared to give you whatever information you want.

MR. ENNIS: He was asked a simple direct question.

MR. HERZOG: He answered correctly, the picture speaks for itself.

What you are trying to do is to pin him down.

MR. ENNIS: That's what depositions are for.

If you prefer, we will go to court and

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ask the court to rule if he should answer that question.

That seems to me a waste of time.

MR. HERZOG: Read the question.

(The pending question was read back by the reporter.)

A The picture speaks for itself.

MR. ENNIS: I think we have to insist you answer the question or we will have to ask for a court ruling.

MR. HERZOG: You can answer it.

A A zippered jacket is not referred to in the complaint with respect to Miss Rappaport.

Q You have said that your regulations were to prevent people from coming to get married wearing inappropriate clothes.

A You are talking about one person, I am talking about the class you presume to represent.

Those persons should, if they are men, we are talking about men's zippered jackets, we made no reference to zippered jacket --

Q It says couples.

A Anybody reading the language knows the jackets referred to are not women's. Women don't wear zippered jackets.

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men do.

MR. HERZOG: I think we can show for the record the term zippered jacket in paragraph 12 refers to men's attire.

Q So I am to assume that a woman who appeared in a zippered jacket would be allowed to be married?

A The answer is yes.

MR. HERZOG: Of course, subject to explanation and extension of that question.

A As long as she doesn't wear any slacks, or pants or anything indicating -- or shorts, complete disregard for my responsibility as City Clerk.

Q Is the woman in the picture wearing a colored, loose pajama outfit?

A In my estimation, in our definition of our regulations, it's a pajama outfit.

Q Is she wearing a halter?

A If she is wearing a halter, I can't see it by this picture.

Q Is she wearing jeans marked with graffiti in front or rear?

A The picture speaks for itself.

Get your ruling, please. I take that position.

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MR. HERZOG: Go ahead, you can answer the question.

THE WITNESS: No, I prefer not to because that more or less indicates that it refers only to --

MR. HERZOG: Off the record.

THE WITNESS: They are suing for the class. I would reject Miss Rappaport wearing any pants for our solemnization program.

MR. ENNIS: We are not trying to trick you. You can certainly say that even though she was not wearing jeans with graffiti, other people do come down with jeans with graffiti.

THE WITNESS: My answers says--so I am not here, as I said before, put it on the record, I am not going to have this deposition restrict my --

MR. ENNIS: Answer the question, and you can expand as much as you wish.

THE WITNESS: No. Remember, you are talking to a lawyer. I can't see any lawyer asking me to define a picture which speaks for itself.

MR. ENNIS: Off the record.

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(Discussion off the record.)

MR. ENNIS: I do not intend to restrict your testimony -- off the record.

(Discussion off the record.)

MR. ENNIS: Please answer our questions. We can get out in short order.

If we have to quibble about every possible question, we will be here all day.

BY MS. CARY:

Q Do you see shredded cuffs on her pants?

A No, but others might take advantage of that.

Q Are her slacks spotted?

A Not spotted. As I can see and as your complaint says, they are very expensive. And I make a rule not to worry if they are expensive or not expensive, and my rule doesn't modify itself whether it's pretty silk or velvet or the like.

The rule is general covering any connotation of pants or its derivatives.

Q All right. The pants aren't shorts.

A They might be.

Q Can you explain that?

A That's the picture. I don't know whether she

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rolled it up and took this picture purposely for the lawsuit, I don't know.

Q But in that picture --

A As it stands, apparently she is exposing the entire trousers.

Q Nor are they plaid?

A The picture may not show whether they are plaid. They might have been plaid for all I know.

Q There is no question here -- you are not claiming that women, say, wearing pants or young men coming in without jackets and ties would cause disruption?

A Define the word disruption and I can help you.

Q Well, for example, do you, are you afraid that there will be any kind of riot or disturbance caused by --

A No, but it would be aggravating other people to find they can come in any kind of an outfit they please for an important ceremony, all of which is covered by the answer.

We tried in the answer to set forth just what our position was and you have to take it from there.

Q In paragraph 19 of the answer, there is a list of exceptions to your regulations on dress. Here

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you mention couples who select special ethnic ancestral or national dress may be married, although it's not strictly a skirt or jacket.

Why did you make these exceptions?

A Because I felt it was consonant with a kind of respect for the particular marriage state that these couples were entering into.

In other words, my regulations are not completely exclusive.

If anybody -- and the import there was to see that the couple come in in a respectful, in my opinion, a respectful and solemn attitude. And the custom is that a bridal gown or similar ethnic custom dress, represents they know they are using the same symbol I am attempting to personify, or acting upon, to show by the same kind of symbol that they are entering into a new state.

Q So in effect the standard that you apply when you make an exception is whether --

A It's not an exception. It's consistent with the same coat and tie which is represented by something clothed properly for marriage and the other is exactly the same thing.

Any more than in my letter to the Legal Aid Bureau when way back in 1969 in answering the question that you

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asked, I made the very statement that I am making now.

Q What I am trying to get at is precisely what standard you apply.

A I have indicated in my answer what standard. Anything which would show a kind of uniform or -- I would put it as respect for the institution that they are entering into and not anything that negates or denigrates that kind of a state, and not a flippant state as is attempted by slacks, is acceptable.

I have, there is a regulation about a coat and tie. Some couples come in with one of these high collared sweaters or particular outfits that a tie can't go on there, so we marry them without a tie.

But my regulations were never intended to be hard and fast rules with respect to these matters.

I intended to advise my staff in the five boroughs and others to the effect that's what they can do and what they can't do.

Q Would you say if somebody comes in with a high neck -- do you mean a turtle neck?

A Yes, or high collared affair, it doesn't take a tie, so no tie is necessary.

Q So a tie is not necessary?.

A In that particular regard. If it's part of the

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outfit itself. If he has a coat -- all of which there is correspondence with your society to the effect that that's acceptable.

Q Well, how does somebody who gets the regulations with the licenses know?

A He surely knows. He certainly knows that it's a tie and coat but if he can't put a tie on, it's self-explanatory. There is no tie to this particular type of high collared affair.

My regulation never was intended to be a straight jacket. It's to be advisory to folks and also a suggestion to those whom I delegate to perform ceremonies at least to be a very obvious, easy and practical way of knowing whether a particular, the particular clothes are acceptable to us.

Q Are you saying you do not refuse to marry people who come in dressed differently than is prescribed?

A My answer so states. If it's a special costume and they come in usually they will come in and either ask us and we will tell them, of course, that's acceptable.

And way back I would say about three or four years ago, that question came up and I answered it.

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The parties called up not because of what they were wearing but because they were 13th or 14th in the group of 30 or some odd applicants and they didn't like to wait in their costumes.

And that was more or less -- rather than the fact that my deputy didn't marry them.

By the way, he did marry them.

Q Do you mean to say if a young man -- you say in your answer that these regulations are handed out with the marriage licenses.

A Yes.

Q If a young man called you up ahead of time --

A No, he didn't call me up.

MR. HERZOG: This is a hypothetical question.

Q If he called up and said I don't want to wear a tie, I want to wear a turtle neck sweater, you would say yes?

A That is correct.

Q Then why do you have the tie regulation?

A The tie regulation is to cover the 98, 99 percent of the individuals who come for a marriage application. They want to know generally if this is the standard.

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If he wants, if anybody comes in and presents himself with the regulation or no regulation with a turtle neck sweater or turtle neck collar, it doesn't take a tie, it answers itself.

How stupid would I be to suggest to my staff that a turtle neck shirt needs a tie because custom doesn't call for a tie.

Q You specifically said in your regulations that a tie is required.

A My regulations, as I say, indicate some kind of regard, reminder of the custom that they have to come in properly attired.

Now the slacks and the ring and the other things suggest that we expect a certain amount of solemnity in the marriage ceremony.

Q If you are saying if a young woman comes in wearing slacks that is an absolute prohibition?

A An absolute prohibition. Anything else is modified according to the conditions.

Those regulations are intended for intelligent couples and not the super-sensitive person's definition of words.

Q How would you feel that someone reading the regulations would know there is a difference between

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one regulation and another?

A They would know I ask for a tie.

MR. ENNIS: They would know or would not?

THE WITNESS: They would know a tie is required if they were wearing a regular shirt.

If it's a turtle neck affair and you don't come in with a tie, we will accept it.

Q Is this explanation that you have just given us of the varying degrees of prohibition in your regulations in writing?

A It doesn't have to be in writing.

The answer to that is because I don't want to make it so restrictive.

As a matter of fact, I am not straight jacketing myself or my staff with respect to how they should be attired. The emphasis is should be properly attired.

Q Various people in your office who have the power to marry people essentially apply their own standards?

A No, they do not apply their own standard. The standard is as follows. Anything which is consistent with a tie and coat, a coat and collar, if the clothes don't call for a tie, anybody worth his -- any significant intelligence knows a tie is not necessary on a

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turtle neck affair. It doesn't call for it.

Q But it's up to individual members of your staff?

A No, that's just -- as far as slacks I want to prevent them from making different rules for everybody, that's with the slacks. All the others require a coat because we have a tie for anybody who forgot it.

As my answer indicates, we have ties, coats all available so as to make it easier for them to comply with that regulation.

If anybody knows anything about sartorial affairs with respect to a turtle neck sweater or turtle neck shirt knows it doesn't call for a tie.

Q But individuals in your office can decide what they believe is consistent with a jacket and tie requirement.

A No, they can't. If a particular dress doesn't call for a tie, it would be ridiculous to assume that any of my staff would assume that they don't know their business with respect to what is -- where a dress calls for a tie and whether it does not call for a tie.

I think the distinction that you are trying to make is completely invidious and has no relationship at all to what we are doing.

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Q Do you have any women on your staff who marry people?

A Sure. As a matter of fact, I was the first one to inaugurate that.

We have a deputy in Brooklyn and we have a deputy in Richmond who marry, both of them are women.

Q How about the Bronx?

A And the Bronx.

Q I am not sure how your staff members know what is consistent. You don't have the exceptions written down anyplace, is that correct?

A I don't intend to have any exceptions written down.

It's a generic word meaning tie and coat and if a dress doesn't call for a tie, it would be stupid to assume it calls for a tie.

MR. HERZOG: You have answered it.

A I know but I am trying to avoid running to court.

Emphasis should be on the question of "properly attired."

Anyone of intelligence -- and all our citizens are sufficiently intelligent to know where a dress doesn't call for a tie and it's proper, that takes care of it.

My directions are not intended to be a kind of a

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sine qua non program.

Q Mr. Katz, are pants less suitable for a marriage ceremony than a miniskirt?

A The answer to that is yes. The answer to that is a miniskirt is a skirt and it's skimpy.

It's impossible to establish whether it's a miniskirt whether it's eighteen inches above the knee or eighteen inches, seventeen inches -- it's a skirt.

It's been adopted by society as what society deems proper or improper A skirt is a skirt.

Q What about a miniskirt with graffiti on it?

A Under my regulation if they have graffiti or tassels or embroidery, we take them. It's a skirt. That's a universal rule.

And the rule about slacks is a rule by itself to indicate that slacks are not adaptable to what we deem to be, within the sections of the Domestic Relations law, a solemn act.

Q Would you marry a young woman who came in in a transparent blouse?

A I don't need a regulation to say transparent blouses are out. I assume there is a present condition of intelligence.

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And as I say, I repeat again, the reference there is "properly attired."

Men in the usual coat and tie, none of them come in in skirts, otherwise I would have to make rules on that but all of them come in pants and the only thing they change is, with complete indifference to the solemn act they are entering into, they walk in with Lord knows what with respect to shirts and we give them a coat and tie.

Q How did you reach the conclusion that pants are improper attire?

A Permitting pants or slacks to be inaugurated is completely, I would say, uncontrollable. There are all kinds of variations of that, that I would think would be derogatory to the marriage solemnization.

Q How did you come to the conclusion that -- say pants as opposed to a miniskirt?

A I came to no conclusion. I felt that society over the years have not bothered with whether a skirt, skirts usually raise so many inches above the knee and go below the knee, and that's been relevant over the years and since skirts is the generic term, any skirt is acceptable and there is nothing wrong with miniskirts.

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I came to that by hard, hard, hard experience with the couples that came in, I would say the one percent of the people coming in my offices.

Q You say one percent --

A Even less than one percent come in on these aberrations with respect to what they were doing, so in order to stop that kind of avalanche of indifference as might be, this indifference of what they are entering into, so slacks became a generic term, keep away from slacks if you want the City Clerk to join in as part of the wedding ceremony.

This is an attempt here -- it's part of the ceremony to perform a marriage.

Q You said you wanted to make sure when you married people they know what they are doing?

A The law requires me to make sure.

Q You feel you have concluded that a woman wearing pants does not know what she is doing?

A I would say yes.

Q How?

A And so does society. My experience after, as a member of the bar for forty-five or forty-six years, I know what I think -- I assume I know what I am doing, but it's not my conclusion, it's the conclusion of society

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that a certain amount of solemnity is necessary, to advise folks that this process is irreversible by law.

Q How do you reach the conclusion that pants don't show the requisite amount of solemnity?

A Pants being abused, having been abused by many years in my office with all kinds of cuts and the rest, I think that was not controllable except by making an outright prohibition.

The word pants or slacks or any derivative that whether they are velvet, white velvet, green velvet, bought in Paris or bought in Ohrbachs.

Q You say you have made the general prohibition against slacks because it would be --

A One of the factors -- first, pants represent a complete negation of the fact that woman is involved. This is man and woman as a program, it's not equality, it's just a general program, but that's only one of the many factors I can mention about fifteen of them but this is not the place for it but the court is.

Q Maybe it's the place.

A It's not I have given you that, you can amplify as you please.

As I said before, I have indicated in my regulations

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that it's my experience and the experience of people coming into the office that resulted in the regulation, all of which I have indicated in the Answer.

Q I am asking essentially, it's not pants per se that you object to but pants that are abused?

A Because pants, if we permitted pants and if I didn't describe what we feel is proper attire, if we didn't do that, which would leave open a whole area of variations of pants.

I could not make a regulation to say that Miss Rappaport, because she bought an expensive piece of clothing in Paris, therefore she is entitled, but the one who pays ten dollars for equally fine pants is not -- it's pants, whether silk or velvet or Paris or Klein's --

Q Hypothetically, suppose you didn't make a general regulation?

A I hoped I didn't have to make an regulation. My answer indicates that I assume that people were sufficiently cognizant of the -- that marriage is a very important step at least with regard for the witness, the solemnizer and the public that is present know that they physically are entering into a state which is very important in society.

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Q Mr. Katz, just looking at the outfit in the picture I showed you earlier --

A It isn't the outfit -- I am looking -- I am looking at trousers, I am looking at slacks.

Q Look at that particular outfit.

A I don't want to make a subjective analysis and that's why I don't want to make it subjective. It has to be objective. It has to be specifically stated to anybody who makes the questions what is proper attire. This is the attire that I would suggest they come in with.

Q So you are saying that pants per se are inappropriate attire?

A Not only because as I stated before, it shows complete disrespect for the marriage ceremony as we understand it in this society, but it also -- if I did not make that general statement, then all the other variations -- if I said only a silk dress bought at Ohrbachs is the only acceptable dress it would be crazy.

But I am saying that pants per se, pants with trousers, pajamas and their like all presented themselves to our office and invariably after the staff had indicated this was not correct, invariably they have gone home, gone back and thanked us for at

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least remembering their ceremony.

I won't put it in conventional terms because there is nothing conventional in the Civil Liberties Union, but they thank us for reminding them that that's what they should have worn.

Q Do you have any reason to believe that Doreen Rappaport --

A I have no recollection of Doreen Rappaport. I don't know her from Adam.

Q You have no reason to question that she entered into her marriage solemnly?

MR. HERZOG: I think the record ought to show that Doreen Rappaport entered into marriage wearing a skirt.

A It's admitted and not only that I admit we married them.

Q After she was forced to change into a skirt.

MR. HERZOG: We don't know if she was forced.

A They got the papers themselves.

MR. HERZOG: The record is clear, she was married in a skirt.

MS. CARY: Absolutely.

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Q The question I am asking is, you have no knowledge, you say in your answer, about Doreen Rappaport, I can conclude -- ?

A My answer said I admit that my records show that we married Miss Rappaport.

Q And you had no reason to believe she was entering into the marriage state fraudulently or with a lack of solemnity?

A I refuse to answer that.

MR. HERZOG: That doesn't require an answer. The answer is she was married in a skirt.

MS. CARY: She was not allowed to wear what she wanted to wear.

MR. ENNIS: Do you mind if I try to rephrase it?

MR. HERZOG: Let's keep the record clear, that's all.

I know what you are trying to develop.

BY MR. ENNIS:

Q Let's put it this way. When Doreen Rappaport came down to be married, not wearing a skirt, what evidence at that time did you or any member of your staff have that she was not intending to enter into the

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marriage ceremony solemnly or with full understanding of what it meant other than the fact she was wearing pants?

A I can't answer that, I wasn't present.

Q Do you know -- have you talked with any of your staff that tells you anything about that?

MR. HERZOG: You can't testify to that.

A I don't know what my staff --

MR. ENNIS: He can testify if he talked to his staff.

MR. HERZOG: I don't want him to unless he knows for certain what his staff member did.

A In my answer I have denied information and belief. They are presumptuous to ask me questions about what took place.

Q I am sorry if we are presumptuous.

A I am answering you.

Q Do you know the name of the person who actually told Doreen Rappaport she could not be married in pants?

A No, because we have many people on the staff. No staff told me because she got a paper indicating that slacks are impossible.

BY MS. CARY:

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Q How do you know that a young woman wearing slacks doesn't feel seriously about her marriage?

A I can't go into the subjective feelings of this particular person.

As the administrator of this program in the city, I have the right to -- I have the authority to establish what would be in a sense rules, suggestions of how people should come in, and I determine by experience and by general knowledge and experience the fact that permitting slacks would be opening up a whole absence of solemnity.

Q You talk about general experience. Can you be more specific? Where do you get this knowledge and experience that young women who wear pants are not serious about marriage?

A Sixteen years' experience in my office sufficiently informed politically and otherwise with respect to what is deemed to be appropriate and inappropriate with respect to ceremonies solemnizing marriages.

I am not a genius to know what's going on. I can tell you that anybody worth his salt that has been involved in these things has some experience and doesn't have to vomit it before this kind of examination.

Q Well, you are saying that a judge who

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to perform.

Q How do you know that?

A From my experience. There is no way, I am not writing a book on the subject of these things.

I know that to me being asked to participate in that, I know that she doesn't know what she is entering into, whether it's an expensive Ohrbachs trouser or pajamas.

Q Do you consult fashion magazines?

A I don't have to.

MR. HERZOG: Eve, I think we have gone far enough on this area. You are just constantly harassing now.

MS. CARY: I don't mean to harass. I have not gotten any answers.

MR. HERZOG: I think Mr. Katz is saying he is trying to maintain a certain aura of dignity and respect for the marriage ceremony and he feels right or wrong is a question that the court will ultimately decide whether a woman wearing slacks or pants -- stop me if I am wrong -- does not bring that aura of respectability and dignity to the ceremony.

MR. ENNIS: That's not my understanding

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marries a woman wearing slacks is performing a less solemn ceremony?

A That's my opinion and I have written some judges about that same subject.

Any more than I think it's disgusting for a judge to walk in his BVD's and perform a judicial act.

None of them have done it, any more than walking in without a robe in the court and that same judge who married these people was told by me he wouldn't dare walk in as magistrate without a robe indicating his authority.

That's a solemn act and you know quite well in many courts pants for women are not acceptable and that is a solemn act and it's a judicial exercise in administration and such dress is an affront to the individual who presides.

And for the City Clerk to walk in with that kind of complete denial of the very thing that the couple want the City Clerk to assist them in --

Q You feel that a woman wearing pants is a denial of marriage?

A In the marriage ceremony it's an exhibition of complete disregard and practically negative, that this is a kind of a simple leisure demand that we are asked

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of his testimony and that is what Eve Cary is trying to get at.

He is not saying it's his personal feeling that wearing slacks shows that, he says it's the community's feeling.

MR. HERZOG: Ask the question.

BY MR. ENNIS:

Q Is that your personal feeling or are you embodying what you feel is the community feeling?

A Both my feeling and what I believe is the community feeling.

BY MS. CARY:

Q That's what I am trying to find out.

A We have answered in the Answer. We have anticipated.

MR. HERZOG: Have you spoken to community leaders and spoken to clergy?

MR. ENNIS: We will ask the questions on direct.

MR. HERZOG: You are projecting something that might delay us.

MS. CARY: It's not simply community standards but as I understood Mr. Katz's testimony, he began by saying he wanted to ensure that young

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people who come in know what they are doing.

MR. HERZOG: He didn't say young people.

MS. CARY: Pecple coming to be married know what they are doing, know what they are walking into, and he believes if they wear pants they do not know what they are doing. He is now talking about his opinion about what a person wearing pants is --

BY MS. CARY:

Q How do you know this is the feeling of a person wearing pants?

A We are not considered with the feeling of a person. We are concerned with the appearance of disrespect for the marriage ceremony.

We are not seeking their subjective feelings.

We are talking about what the community and I as a member of the community have understood that the pants themselves, where we have given advice as to what wold be appropriate or not appropriate, would negate the solemnity of the occasion.

Q Ii I may sum up your testimony, what you are saying is you believe they are not serious and it doesn't matter what they believe?

A No. It's what they believe. What a person believes

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personally with respect to matrimony is not my concern.

My concern is that the community has the duty to in this fashion, in this manner to indicate to the couple that they are engaged in a solemn event, ergo pants represents a complete denial or rejection of the act that they are entering into.

Q And this is true even though the woman or the couple that's getting married says they don't feel that way?

A The City Clerk is not concerned with a subjective feeling of the individual.

He doesn't ask any questions of their subjective feelings.

His duty is required by lawyers to see that these statutes are followed and this is a solemn event.

Q When did you first enact this regulation?

A My Answer gave you that.

Q You said in 1965 a regulation --

A That's right. The sartorial regulations were enacted after all this experience with the abuse, the laissez faire program existing before.

Q I am saying, has it been the same regulation for all nine years?

1981

A Insofar as the slacks program is concerned and the suggestion to wear a coat and tie have been consistent all these years, have been shifted around and other things added.

Q What things?

A Ours --

Q Any change in the dress regulations?

A No.

Q That's been the same?

A Yes.

Q Has this regulation been reviewed at any time?

A No. This office reviewed it. I wrote in 1959. my feelings and they are the same as now. You have my letters. As a matter of fact I suggested.

Q You say this office, you mean the Civil Liberties Union.

I am saying you specifically, you have been City Clerk a long time. Possibly you made the regulation in 1930.

A I didn't make it in 1930. I wasn't City Clerk then.

Q Supposed you had, styles have changed presumably at one point.

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A That's what your position is with respect to styles and fashion, but matrimony has not changed.

Q Suppose the regulation in 1890 --

A Then it would be wholly unnecessary to make that rule and that's what my Answer said.

I was driven from that by the abuse of individuals who felt they were bigger and taller and more symbolic than the matrimonial state they are engaging in.

Q But you have never reviewed the regulations

A I have reviewed it from time to time.

You have written me letters, in fact, and I answered it.

In fact, reading my answer in my letter to you in 1969 -- you will find I have had the same position. And I requested you to come down to the office and talk it over with me and review it. If you dispute the use of the word review, the Appellate Court, no court made a decision.

Q You yourself?

A I reviewed it and I found I was more determined than ever to stop the abuse because since then I have had all kinds of attempts to counter it and I will say just very few have inquired about it.

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And I will repeat for the record -- we made no record of this, that all of them have returned with skirts and then demonstrated thankfulness and appreciation that we insisted on that.

Q Most of the years you were City Clerk there was no regulation, is that correct?

A No regulation, as my answer indicates.

It would be presumptuous for me to make regulations if there was no abuse, people knew how to come in properly dressed.

Q But you were fulfilling your duties under the statute with no regulations.

A Yes, but as my Answer indicates--I had hoped to find my Answer speaks for itself -- that is that we then we spoke to people about it when they came in without any regulation, they said why didn't you tell us.

So I was driven to put down some guidelines.

Q There is no requirement in the statute you make such a guideline?

A (No response.)

MR. HERZOG: The statute speaks for itself.

A As a former legislator, I thought it would not only be ridiculous but presumptuous to tell

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to the community, to tell them what is proper or improper by law.

Q You have spoken several times about people knowing what they are getting into. What do you feel people are getting into?

A You read the statute, you will know what I am talking about.

Let me have the statute, I will read it to you.

Q What is your idea?

A My idea as administrator is to convert the statute into living act.

Q What values do you believe should be expressed in a marriage ceremony?

A Solemn values.

Q What solemn values?

A It's a matter that the literature is full of.

Q Do you believe that the equality of the husband and wife in marriage --

MR. HERZOG: I object to that question. He is a City Clerk. He does a ministerial act in performing a marriage ceremony and his beliefs have nothing to do with what he has to do.

MS. CARY: I can tell you why I have asked

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the question if that would help.

Two of the plaintiffs in our case believe very strongly in the equality of the husband and wife in marriage and they wish to wear something that will symbolize that, they wish to dress alike and that means that the woman wants to wear pants.

They consider this a very solemn value.

BY MS. CARY:

Q Do you consider that a solemn value?

A I think you have got enough to indicate by my regulations what I think of it.

Q Could you tell us?

A It's not solemn when they wear pants or trousers or denim pants, dirty, like anything other than a matrimonial program.

The equality of man and woman has nothing to do with the program.

Q All right. In paragraph 23 you use the phrase "effective marriage ceremony".

A That's what you used.

Q It's in the answer.

A You used it with your complaint. You said effect a valid marriage. I am answering your complaint.

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Q You said, "The attributes of an effective marriage ceremony" --

A Is what?

Q -- "are exclusively within the jurisdiction".

I wonder what you mean in that instance by 'effective'?

MR. HERZOG: 23.

A Valid -- you are talking about the jurisdiction?

Q Did you say valid?

A No. The legislature determines what a valid marriage is by its laws.

Q You just mean valid, not legally valid?

A My word is attempting to be as broad as it can be. I didn't want to use the word valid because that's a very, very elusive word, valid, and therefore, I avoided that.

Q I was asking, do you mean legal or something beyond that?

A No, the legislature has the power.

MR. HERZOG: I don't think he means anything more than valid.

Q You have said in your answer that a wedding day is the most important day in people's lives.

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Do you think that people who don't feel it's the most important day in their lives should not be allowed to get married?

MR. HERZOG: I object.

Don't answer that.

MR. ENNIS: What's the objection?

MR. HERZOG: I don't think it's a relevant question.

MR. ENNIS: I thought we had the normal stipulations which are waiving objections to relevance and materiality but include just to the form of the question.

MR. HERZOG: But, Bruce, aren't we going a little offbeat there?

MR. ENNIS: It's only one question, I think. It's not a line of questions.

THE WITNESS: What's the question, I can't remember.

Q The question is, should people who don't think that marriage is the most important event in their lives be permitted to be married by the City Clerk?

A I don't know.

MR. HERZOG: You are taking a word of art, the "most important day". I am sure the answer

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never meant it to be absolutely the most important day.

THE WITNESS: If you want to modify it, modify it in your own language.

MR. ENNIS: I would prefer Mr. Katz answer the question and you make answers that might be confused attributably to the witness.

BY MS. CARY:

Q Do you feel it's the policy of the State to encourage marriage?

A Yes, through applying for a license and getting married and the usual --

Q You said in an article in the New York Post, in an article attributed to you that you are violently against unmarried arrangements.

A Yes, I am. What I said in the Post is correct.

Q So you feel it's better for people to get married than living together?

A That's correct.

MR. HERZOG: You are asking a personal opinion.

That's a personal opinion. You can say it's a personal opinion.

Q Do you feel that your regulations have

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a chilling effect?

A The answer to that is no.

Only a supersensitive, bigoted, unrespectful person thinks that way.

And I am glad that they are just an infinitesimal part of our community.

Q Before the dress regulations were instituted, how many people would you say came in inappropriately dressed?

A I made no record of it.

Q I think earlier you said approximately one percent.

A I was guessing at that time.

Inappropriately, and they went back after we suggested what should be proper and as indicated before, we were sufficiently concerned about it so we had available and still have coats and ties and rings.

Available for those persons, as I indicated, these are usually -- they usually tell us they forgot about it.

Q Not meaning to go over ground we have been over before, but I would just like to pin down something I wasn't sure of before.

Do you feel your regulations reflect

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community standards?

A Yes.

I am the representative of the community and I assure you, as my Answer says, if the community tells me that they don't think it's a proper regulation, I will be glad to consider it.

Q What is the average age of the persons who get married?

A I don't know, we never took statistics.

MR. ENNIS: Just a few questions.

BY MR. ENNIS:

Q Do you know if someone in your office did receive telephone messages from Miss Rappaport?

A I assume they did.

Q Did you know about it?

A I assume -- my feeling about the subject is that it's just one of the staff programs.

They may have -- I may be called across to City Hall and either they don't get around to it and by the time I get around to it, it becomes a thing --

I pride myself for being the only agency that responds to telephone calls and Irving can tell you that's correct.

When your own Barbara Shack called up there was

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an immediate call. There was a follow up, so far as I was concerned.

From where I sit I am as anxious to see the other fellow has my opinion, even if they disagree with me.

I think I spoke to you many times on some questions.

Q You have attached as Exhibit A to your Answer the dress code regulations which are paragraphs 8 --

A Just --

Q Marriage regulations, more or less, quickly --

Are there any writings, any other regulations affecting the marriage ceremony?

A No.

Q Are there any written communications to your other deputies on this subject?

A No, they have got the same rules.

Q Have you ever had a meeting with your deputies or agents at which you orally discussed the requirements for a marriage ceremony?

A I usually go to my offices in the various boroughs and discuss these matters and many times I condemn them for not being fast on the program.

Q And have you discussed with them paragraph

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8 and 9?

A Yes.

Q Can you recall what advice you gave them in amplification or modification of these standards?

A Always there was a question -- I gave them all this rule where the dress doesn't call for a tie, not to ask for it. If it's a costume where the come in some special costume, what might be deemed either national costume as I have indicated, that is acceptable.

And by the way, we married, we have evidence of the individuals who were married in a dashiki.

Q Have you advised the members of your staff in writing or orally that they should advise people who come down expressing an interest in being married that the provisions of 8 or 9 with the exceptions of the provision with respect to slacks are not mandatory but only advisory?

A They are not advisory. They are mandatory in the sense that we have coats, ties and rings where any of the deputies feel they should be worn, and that's about all. But the skirts program is mandatory.

Q Have you given any consideration to modifying your regulation so it would read that appropriate exceptions to this regulation may be made

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except for the wearing of slacks?

A I can give -- I gave that consideration but I am afraid that will leave a loophole for all kinds of variations and more or less as often happens with regulations, everybody believes they have got the exceptions.

And as an administrator I find that somehow or other you have to get to a point where you make it very precise.

Most of my deputies know those things are advisory because we have coats and ties and rings available.

So in a sense it would be -- advisory, but skirts are required, but slacks in all forms and variations not a practical position to allow for exceptions.

If you can come up with a specific suggestion as to how to make the exceptions and make it narrow enough to include this particular matter, assuming I went ahead and said ancestral costumes are acceptable, I want to assure you that there would be four or five groups would come in and say that's their costume in Paraguay and the like, and we would have difficulties.

I repeat again, if anyone, and that's been bothering me over these years and remember --

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MR. HERZOG: Let him finish his answer.

A I have had a request to the corporation counsel how to see if we can get in some regulations, how to handle that particular, what I would call equitable, exception, but it's just humanly impossible to write the English which would not open the door for what I would deem to be a complete --

Q It's essentially a problem of drafting it?

A Drafting it.

Q Did the corporation counsel have any response to that?

A No.

Q Any suggestions?

A No. In these matters, these are oral conversations and it's just physically impossible for me to draft them. We have got enough problems with petitions and the like.

Q Let me see if I understand correctly, I don't want to put words in your mouth.

Is what you are saying is the problem with slacks, is that slacks, unlike the other articles of clothing you are talking about, are particularly subject to abuse?

A That's right.

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Q That certain kinds of slacks can be too wild, too flamboyant, too spotted?

A That would be -- it doesn't completely represent my own thoughts, but it does attempt to get into the English.

Q I see what your problem with drafting is. But if we could somehow come up with an appropriate regulation that would permit the wearing only of those narrow classification of slacks that do seem solemn and appropriate and exclude all other kinds of slacks would you be willing to consider promulgation of that modified regulation?

A I would be willing to consider it.

Q In other words, it's not that all slacks inferentially show disrespect or lack of understanding but slacks in general are capable of being abused.

A It has been abused.

MR. HERZOG: Off the record.

(Discussion off the record.)

MR. ENNIS: Back on the record.

BY MR. ENNIS:

Q Do I understand you correctly, that when you are talking about slacks, it's especially a problem where to draw the line, that nice slacks no one would

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object to but other slacks you would and you find it impossible to draw the line?

A Yes. If we could draw theline but the word"nice" is difficult.

In my previous testimony I said if I could authorize a deputy to say"Give me the bill of sale where you bought it in an expensive place -- that's what's bothering me".

The minute you say"nice," it might be silk, it might be denim, and the response is we have a couple coming in and say look, these are clean slacks, permit me to be married.

Q Yes.

A If I permitted that, another would come in with half slacks and shorts and these are actual experiences.

Q Or frayed or spotted?

A Now -- off the record.

(Discussion off the record.)

MR. ENNIS: Back on the record.

BY MR. ENNIS:

Q If I really understand you correctly, at least wiht respect to slacks, the reason you finally found it necessary in 1965 to promulgate a regulation with respect to slacks, that a significant number of people

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were coming down wearing dirty slacks or frayed or spotted or flamboyant or something like that?

A Right.

Q Let me ask it this way. Possibly at that point in time the same number of women had come down wearing slacks but that instead of wearing dirty, spotted, frayed, flamboyant slacks, the only types of slacks they had worn are the type worn by Miss Rappaport in Exhibit A here, would that situation at that time have been so serious that you would have felt compelled to issue a regulation?

A The answer to that is yes, for the following reason. There is a practical proposition. Once we make that rule, this particular type of slacks, those who come in with slacks will contend they are equal to this, in other words, equal to --

Q No, maybe I didn't phrase it right. I understand the problem of drawing lines once you found it necessary to draft a regulation.

I am talking about a different matter. You didn't have a regulation for a long time, you didn't think the marriage ceremony was breaking down and so forth. It was essentially solemn for almost everybody that came down.

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I want to say this, if the few women that came down between 1960 and 1964 who wore slacks did not wear dirty, frayed or flamboyant slacks but wore only velvet slack suits --

A In 1965?

Q Would you have then felt there was such a problem you would have to issue any regulation at all or would it be sufficient to allow those few people to come that way?

In other words, isn't it true that what really prompted the regulation was the dirty, flamboyant type of slacks?

A Not only the dirty, it was the flamboyant slacks, it was the shorts rather than slacks, more or less.

Q But if the only women that came down were attired exactly as Miss Rappaport in Exhibit A, you wouldn't have thought it necessary to go to the trouble of a regulation?

A If it was a few.

Q We understand you. One or two more brief questions.

I assume there are other city clerks in other parts of the state that have marriage ceremony responsibilities.

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A No.

MR. HERZOG: No other clerk is the law in this state. I don't know about other states.

No city has a clerk except the City of New York.

A Who performs marriages. Over the rest of the state, they just issue licenses.

MR. HERZOG: Justices of the peace do it.

BY MR. ENNIS:

Q The last question I have is somewhat difficult to phrase.

I can understand your objection to people coming down wearing, say, slacks or no ring or whatever, if your impression is that is simply on their part disregard for the importance of the marriage ceremony.

But if you were convinced that people were, a woman wanted to wear slacks or did not want to exchange rings because they had a deeply held belief, political belief in the importance of wearing what they wanted to wear at their own marriage ceremony or not exchanging rings, would you then be willing to make an exception to your regulations for those people?

A No, but it's completely subjective.

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I am engaged in an objective public appearance which is part of the, I sense, of the marriage ceremony and that is what over the years the marriage ceremonies mean, it's a public demonstration of the troth of the individuals.

Not private, that goes on without marriage licenses.

Q Are you saying it's more important that the marriage ceremony seem solemn and significant to the community or that it be solemn and significant to the people who get married?

A Both the people who get married as well as the public.

I am conveying to you my personal opinion about it and what I feel is what my obligations are under the statute.

BY MS. CARY:

Q Where there is a conflict between those two values, you feel the community value comes first?

MR. ENNIS: No further questions.

A That is the essence of your program here. I recognize what is being attempted here and I think it's grand and I will -- off the record.

(Discussion off the record.)

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MR. ENNIS: On the record.

BY MR. ENNIS:

Q You are talking about community values. The State of New York and the community, the State of New York.

A If the legislature wanted me to legislate it --

Q If you took a poll of the population of the City of New York and 99 percent of the people answering the poll said they thought wearing pants was a perfectly solemn and respectful attitude toward the marriage ceremony, would that reflect the community attitude?

A I believe like the poll I took privately.

Q You have taken a poll?

A Not in the sense of a Gallup poll or a Harris poll but the letters and advice and other opinion of people around the city have said fine, Herbert.

Q People --

A I am talking about the radio people, and others who have communicated with me by telephone.

Q You are talking about an informal, ad hoc -

A Yes.

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Q Have you made any attempt to consult with marriage consultants?

A No.

Q There is a recognized body of marriage consultants who advise people about their marriages.

A They have nothing to do about entering into a marriage.

MS. CARY: You mean wedding consultants.

THE WITNESS: There are no wedding consultants.

MR. HERZOG: They don't -- people who go to wedding consultants --

THE WITNESS: They are caterers.

MS. CARY: There are actual wedding consultants in stores.

THE WITNESS: Marriage consultants.

MR. HERZOG: I think what Miss Cary is talking about are fashion --

THE WITNESS: Oh, that. I want to warn you that is ephemeral. The fashion person is interested in the sale of a certain type of clothes.

They are trying to sell clothes rather than be concerned with marriage.

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If you want that, I can give you -- off the record.

(Discussion off the record.)

MR. ENNIS: Back on the record.

BY MR. ENNIS:

Q My final question --

MR. HERZOG: Again?

Q -- about the rings. You mention if people come down and do not have a ring, you have rings available that they can use. At the end of the ceremony, do they give the rings back?

A Those rings are 15 or $16 apiece.

Q It's purely symbolic?

A Yes, to cover what I deem to be the fundamental Blackstonian legal formula of exchange.

After that, they return -- they can give the gift back again.

Q Do you think the ring requirement is required in order to show solemnity or required by contract law?

A Contract law and symbolic -- there hasn't been a marriage I know where there hasn't been -- in civil performances, non-religious performances as with marriages unless a ring were part of the formula and I

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have been trying to avoid the religious point of view but just a ring.

Q It's required as a matter of contract law?

A Not exactly the ring -- which came first, I don't know.

The point is that what I deem to be the verbal oral promise is not even proper in the statute because the statute says that this is a civil contract, that's what the statute says.

Q Does the statute precisely require exchanges of rings?

A No.

Q Do rings have to be exchanged before a judge?

A If he doesn't call for it, that's his business.

Q Is that ceremony no longer valid? Does the contract law require a ring before the City Clerk but not require it before a judge?

A The contract law calls for it, regardless of whoever performs it.

Q If the judge performs the ceremony without a ring, it's invalid?

A No, not if there is an aroma of the ceremony.

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Valid and invalid gets us into trouble. That's why I avoid it's use.

Even though under our rules under some notions of judges, they may call a thing a marriage without even having a ceremony, a license or a ring, but call it a marriage because the parties live together.

So, I mean, you can't -- I am trying to avoid the word valid.

MR. HERZOG: I think you have answered.

MR. ENNIS: No further questions.

MR. HERZOG: No questions.

(Whereupon, the examination was concluded.)

HERMAN KATZ

Subscribed and sworn to before me

this day of 1974.

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C E R T I F I C A T E

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

I, PAULINE G. WINSLOW, a Certified Shorthand Reporter and a Notary Public within and for the State of New York, do hereby certify:

That I reported the examination of the witness HERMAN KATZ, who was duly sworn by me, and that such examination is a true transcript of my stenographic notes of the testimony given by such witness.

I further certify that I am not related to any of the parties in this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 16 day of April 1974.

Pauline G. Winslow
PAULINE G. WINSLOW

14107

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DOREEN RAPPAPORT, DESMOND CALLAN, M.D., CAROLA DIBBELL and ROBERT CHRISTGAU, for themselves and all others similarly situated, Plaintiffs, -against- HERMAN KATZ, individually and as Clerk of the City of New York, Defendant.	NOTICE OF MOTION FOR PARTIAL SUMMARY JUDGMENT 74 Civ 287 Judge Pollack

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of Eve Cary, sworn to June 24 , 1974, and the 9(g) Statement annexed hereto, and upon all the proceedings heretofore had herein, the undersigned will move this Court pursuant to Rule 56 of the Federal Rules of Civil Procedure, on the 13th day of July,1974, at 2:00 in the afternoon or as soon thereafter as counsel may be heard, at the United States Courthouse, Foley Square, New York, New York, for summary judgment herein on the issue of the constitutionality of the Defendant's regulations, on the grounds that no genuine issues exist as to any material facts, and that plaintiffs are entitled to judgment on this issue as a matter of law, leaving only the question of the amount of damages, if any, for determination at a later date.

PLEASE TAKE FURTHER NOTICE that upon the annexed affi-

davit, and upon all the proceedings heretofore had herein, the undersigned will move in the alternative at the time and place referred to above, pursuant to Rule 65 of the Federal Rules of Civil Procedure, for a preliminary and final injunction enjoining the defendant from abridging plaintiffs' constitutional rights.

PLEASE TAKE FURTHER NOTICE, that plaintiffs request that should a hearing on any factual issue be deemed necessary, the trial of this action on the merits be advanced and consolidated with the hearing of this application for preliminary relief pursuant to Rule 65 (a) (2) of the Federal Rules of Civil Procedure.

Yours, etc.

Eve Cary

Eve Cary
Bruce J. Ennis
Attorneys for Plaintiffs

New York Civil Liberties Union
84 Fifth Avenue
New York, New York 10011
(212) 924-7800

Dated: New York, New York

July 24, 1974

State of New York)
)ss.:
County of New York)

EVE CARY, being duly sworn, deposes and says:

1. I am an attorney admitted to practice before the bar of this Court, with offices at 84 Fifth Avenue, New York, New York, and I am one of the attorneys for plaintiffs herein. I make this affidavit in support of plaintiffs' motion for summary judgment.

2. No dispute exists as to any material fact in this case as is shown by the annexed Statement pursuant to Rule 9(g) of the General Rules of this Court.

3. Plaintiffs believe that they are entitled to summary judgment in their favor on the grounds that Defendant's dress and ring-exchange regulations violate their rights under the First and Fourteenth Amendments to the United States Constitution. Their arguments are discussed more fully in the accompanying memorandum of law.

Eve Cary
EVE CARY

Sworn to before me
this 24th of June, 1974

PAUL O. SHERMAN, ESQ.
Notary Public, State of New York
No. 31-4627115
Qualified in New York County
Commission Expires March 30, 1975

NOTARY PUBLIC

A110

DOREEN RAPPAPORT, DESMOND CALLAN, M.D., CAROLA DIBBELL and ROBERT CHRISTGAU for themselves and all others similarly situated

Plaintiffs,

-against-

HERMAN KATZ, individually and as Clerk of the City of New York,

Defendant.

STATEMENT PURSUANT TO RULE 9 (g)

Plaintiffs respectfully submit the following statement pursuant to Rule 9 (g) of the General Rules of this Court describing the facts about which no material dispute exists herein:

1. Defendant Herman Katz is the Clerk of the City of New York and as such has the power, pursuant to Section 11 of the New York Domestic Relations Law, to perform marriage ceremonies and to designate members of his staff to perform marriage ceremonies.

2. Plaintiffs Doreen Rappaport and Desmond Callan, M.D., were married by an agent of defendant Katz at the Manhattan offices of the New York City Clerk on November 2, 1973.

3. Plaintiffs Carola Dibbell and Robert Christgau are engaged to be married and plan to have the ceremony performed by defendant Katz or his agent.

4. Under color of the authority vested in him by Section 11 of the New York Domestic Relations Law, defendant Katz has promulgated the following written regulations for couples who wish to have their marriage ceremony performed by him or his

agents:

> Every couple should be properly attired, the bride must wear a dress or skirt and blouse -- no slacks -- and the groom must wear a coat and tie."
>
> One or two rings must be exchanged.

5. These regulations are customarily given to persons requesting to be married by defendant when they receive their marriage licenses.

6. Defendant has established an office policy that exceptions to the regulations requiring a tie will be made for men who wear turtleneck shirts or other shirts or jackets that do not require a tie. This exception is not in writing and is not communicated to persons who wish to be married by defendant except upon inquiry by them.

7. Defendant has established a further exception to the regulation requiring an exchange of a ring or rings, so that persons who do not have rings or who do not wish to exchange them may instead exchange any other tangible item. This exception is not communicated to persons wishing to be married by defendant except upon request by them.

8. Defendant makes no exception to the regulation prohibiting brides from wearing pants.

9. Defendant has promulgated no other regulations than those cited above governing the personal appearance of persons who wish to be married by him or his agents. Thus, miniskirts with graffiti are permissible under the regulations.

10. Plaintiff Rappaport wished to wear pants to her wedding, but was required by an agent of defendant Katz to change into a skirt.

11. Plaintiff Dibbell wishes to wear pants to her wedding.

12. Plaintiffs Dibbell and Christgau do not wish to exchange either one or two rings as part of their wedding ceremony.

State of New York)
) ss.:
County of New York)

ROBERT CHRISTGAU, being duly sworn, deposes and says:

1. I am 32 years old; I reside at 308 East 8th Street, New York, New York; and I am employed as a music critic by "Newsday." I am a plaintiff in this suit and I make this affidavit in support of plaintiffs' motion for summary judgment.

2. I understand every aspect of my life as mediating between the lessons of tradition and the practical pressures of the future. My stance as a critic embodies that tension and so does my personal appearance. I choose my clothes both for their practical qualities and also to make a symbolic statement which subsumes these qualities. For example, on certain formal occasions, I wear a tuxedo jacket with blue jeans symbolizing both a reaffirmation of tradition and defiance of its unnecessary strictures.

3. In recent years many of my so-called co-culturists have questioned the viability of marriage as an institution. It is my suspicion that this challenge to monogomous family relationships is at best vastly premature. But I also believe that if marriage is to remain vital in the modern world it must respond to that same tension between past and future. For this reason, the question of what Carola and I

wear at our wedding takes on profound symbolic importance.

4. For me marriage is a life-time commitment of a man and a woman sharing all responsibilities both for each other's lives and for the acculturation of new human beings, our children. Because marriage has traditionally been an unequal yoke , it is essential to me that my marriage ceremony emphasize the equality of the partnership. For this reason, our dress at this ceremony must be virtually identical. The meaning of the ceremony would be vitiated if we were required to dress in a manner that to us symbolizes immoral and outdated stereotypes.

Robert Christgau

ROBERT CHRISTGAU

Sworn to before me
this 19th day of June, 1974.

Bruce Ennis

NOTARY PUBLIC

BRUCE J. ENNIS
Notary Public, State of New York
No. 31-6191955
Qualified in New York County
Commission Expires March 30, 1975

State of New York)
)ss.:
County of New York)

CAROLA DIBBELL, being duly sworn, deposes and says:

1. I am 29 years old and I reside at 308 East 8th Street, New York, New York. I am employed as a free-lance journalist. I am a plaintiff in the within suit and I make this affidavit in support of plaintiffs' motion for summary judgment.

2. In my work as a writer and in my life in New York City I find that dressing in pants -- formerly the attire exclusively of men -- protects me from much of the sex-role stereotyping to which women continue to be subjected both professionally and socially. Women have traditionally been required to wear clothing that enhances the "feminine" style of attractiveness while inhibiting movement and flexibility. I believe that beauty and effective strength are not in opposition and that an attractive style is also an honest style.

3. I try to achieve honesty in all aspects of my life, and therefore I try to wear clothing which while comfortable and sturdy, enhances my true qualities and does not make me appear to be a person I am not.

4. At my wedding, I intend to dress in pants, so

that I can be attractive, comfortable, and flexible, as I wish to be in my marriage. I feel strongly about what I wear at my wedding because I believe my dress symbolizes my belief that the marriage relationship will be vital and enduring only if both partners enter into it equally and honestly. I do not want any aspect of my wedding to be out of keeping with my life-style and beliefs.

Carola Dibbell

CAROLA DIBBELL

Sworn to before me
this 19th day of June, 1974.

NOTARY PUBLIC

ERNEST J. ENNIS
Notary Public, State of New York
No. 31-6191955
Qualified in New York County
Commission Expires March 30, 1976

N.Y. Post
3/29/79

Skirts Win Albany OK



Pamela Crupi, 19, an Assembly page, chats with deputy Assembly superintendent Anthony Cerulli, before the ban on skirts was rescinded. Associated Press Wirephoto

ALBANY (AP)—Girl pages in the Assembly have won a reversal of the policy banning skirt and dresses. They aren't sure, though, whether they will give up wearing slacks.

"Only two of us wore dresses anyway," said Pamela Crupi of Rensselaer County. "It was just the way they told us that we didn't like."

'How Come?'

Shortly aftre the legislative session opened in January, aides suggested that the five girl pages wear slacks with their green Assembly blazers instead of skirts or dresses. The young women said a lawmaker had complained that the short skirts disturbed the Assembly's decorum, but they would not identify him.

The new policy disappointed several Assemblymen.

"Some of them yelled at me, 'Hey, how come you're not wearing a skirt'" said Mary Jane Barker of East Greenbush, a recent graduate of the State University at Albany. "I kinda like to wear skirts once in a while."

Besides, she said, some of the lawmakers are "older men who were raised in the old school of thought. I think they would like skirts."

After the girls complained about the policy to reporters, Assembly Speaker Perry B. Duryea announced yesterday that he was rescinding it.

Anthony L. Cerulli of Cohoes, who supervises the pages, said no formal policy had been established. "We can't dictate to them," he said. "We just want something that's proper for the decorum of the house."

He said jeans would be unacceptable on the male and female pages. Some of the girls have been wearing jeans, however.

A118

DOREEN RAPPAPORT, DESMOND CALLAN, M.D., CAROLA DIBBELL and ROBERT CHRISTGAU, for themselves and all others similarly situated,

Plaintiffs,

-against-

HERMAN KATZ, individually and as Clerk of The City of New York,

Defendant.

AFFIDAVIT, SUMMARY JUDGMENT, MOTIONS BY PLAINTIFFS AND DEFENDANT

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

HERMAN KATZ, being duly sworn, says:

I am the defendant named herein. For the past fifteen years, I have been and am now the City Clerk, Clerk of the Council of The City of New York, appointed by the City Council, with prescribed city functions set forth in the New York City Charter and the Administrative Code.

As such City Clerk, pursuant to several New York State Statutes, I have other varied state duties and obligations. At issue here, are those mandated by the Domestic Relations Law, Articles 2 and 3, §10 to 25, captioned "SOLEMNIZATION, PROOF AND EFFECT OF MARRIAGE". I refer this Court to my answer, particularly to the fact recital in the development of the dress code and the three affirmative unreplied-to defenses.

This affidavit is submitted in opposition to plaintiffs' motion for summary judgment and in support of defen-

dant's motion to dismiss this unjustified and legally insufficient proceeding.

1. As a practicing attorney since 1926 and admitted to this District Court in 1929, I am perplexed with the unreality and triviality of the hypothetical 'pants' issue posed by the New York Civil Liberties Union.

2. Plaintiff Doreen Rappaport is "embarrassed" and disappointed that she could not take pictures, in the City Chapel, wearing her expensive and special Paris pants suit. She was required to wear a skirt which she did. Plaintiff Carola Dibbell, a freelance journalist, claims that it isn't "honest" for her to dress as a woman at a marriage performance. She seeks "equality" with her fiance, a music critic, which is not attainable unless she dresses as he does with "pants". The New York Civil Liberties Union seeks to endow 'the solemnization' service with Federal attributes of "civil liberties". The Union ignores that these "liberties" must to be co-relatively balanced with the prevailing obligations, responsibilities and components of entry into "marriage", a fundamental societal institution having compelling substantial interests, superior to subjective "life style" notions. I have recently noted in the press, that marriage with its solemn symbolic ceremonies "precedes and predates the Constitution".

3. It is unrealistic and ostrich-like for plaintiffs' counsel to purposely omit in the affidavits and law memorandum all mention or reference to the Statutory term "SOLEMNIZATION OF MARRIAGE" as if its an ugly word, and to substitute the word "wedding" throughout. The Domestic Relations Law makes no reference whatsoever to "weddings". There

is a large community of "wedded" couples without the benefit of prior license and post solemnization, who prefer such life 'style'; nevertheless they accept the fact that the state deems them unmarried.

4. It is unrealistic and irregular for plaintiffs' counsel not to take some pleading position by admitting positively or denying vehemently the facts outlined in the answer, Paragraphs VIII to XXI, setting forth the factual and historical background resulting in the promulgation of informal reasonable guidelines of what is "proper attire" to induce the City Clerk's personal participation with the plaintiffs, in a solemnization ceremony. Indeed for the purposes of both motions for summary judgment, the facts not controverted must be deemed admitted and that circumstance alone should require the dismissal of this proceeding.

5. It is unrealistic and inexcusable for counsel for the plaintiffs to continue, despite the answer and the facts, to repeatedly allude to the suggested 'ring' requirement. Not one instance has been reported of any marriage solemnization being refused by reason of the absence of a ring. Counsel for the plaintiffs should know better than to 'harp' on the ring recommendation, to inquiring marriage applicants. There is present no constitutional harm in nudging loving couples to show their affection by a ring or two. (Putting aside necessary contract' consideration elements.) When the City Clerk loans a couple the 'house' rings for the ceremony, it is a friendly signal to the groom that he should have presented his bride earlier with some token of appreciation and exchange.

6. Five years ago when the same staff counsel for

the Civil Liberties Union inquired then, that my office "will not perform civil marriage ceremonies unless the bride is wearing a dress and the groom a tie", I replied with a letter, copy of which is annexed and made a part hereof. (Marked Exhibit A) The reasons stated were then pertinent and are the same today. At no time since did the Civil Liberties Union send its representative to discuss the matter with me. This very suit was commenced without any request for information conference.

7. At no time all these years has the Civil Liberties Union sent its representative to visit the five appropriately decorated Chapels in each of the Boroughs to observe the City Clerk's 'solemnization' service—to get to see what it is all about!

8. It is unrealistic for the Civil Liberties Union Counsel not to discuss or suggest what is "proper attire" for the milestone event for a man and woman, on their marriage solemnization rite date. Is Union suggesting that couples come inappropriately attired for solemnization? Counsel magnanimously offers that nudity would not be appropriate. Is the City Clerk to refuse nude persons but accept bare-chested males with bulging shorts as grooms and G-string bikini wearing women as brides, under the rule that they are wearing something.

9. When the subject of this law suit was publicized by the Union and before service upon defendant of the complaint, a well known writer of the New York Post, Mrs. Harriet Van Horne, characterized this suit as a "Nuisance Suit" and a disservice for the ever proper expanding areas of women's

activity. Copy of the comment is annexed hereto and made a part hereof. (Marked Exhibit B) Mrs. Van Horne effectively concluded that 'pants suits' denigrated the sensitive mood of "solemnization". She wrote that "confused clerks will be opening the ceremony with, "Now, which one of you is the bride?" Defendant adopts every word in the whole Article as his own.

One Judge is reported in the press to have asked in Court at such instance of exhibitionism, "Should I address you as "Mister, Mrs. or Ms."? I don't know." Other judges have found lawyers in contempt for open shirts with pendants, without a coat—and women jurors in pants suits excused from serving.

This same issue of proper dress for women at public important solemn occasions impelled the writers of the Bible to mandate under the Laws of Kindness, Deuteronomy XXII, Verse 5:

> "A woman shall not wear that which pertaineth unto a man, neither shall a man put on a women's garment; for whosoever doeth these things is abomination unto the Lord thy God."

The Supreme Court of the United States several millenniums later, because of the emergence of a new cult of dress exhibitionism, was required to establish guidelines similar to the City Clerk's, so as to assure some degree of respect, disciplined solemnity owing to and in the Courts of Justice. The New York Times report of Monday, March 11, 1974, outlining the dress code annexed hereto and made a part hereof, (marked Exhibit C) describes the new dress code for the Supreme Court. Marriage solemnization procedures

call for no less deference in the City's "Chapel" devoted exclusively to marriage solemnization.

10. The answer outlines the considerable expense The City of New York had in providing its citizens with decorous and appropriated Chapels for the solemnization of marriages. These Chapels are not intended for symbolic unisex demonstrations. Somehow in the Plaintiffs' Counsel's presentation of the April 5th 1974 report of happenings in the City Chapel—pictures of the Chapel and other rooms were omitted—Exhibit D, made a part hereof—shows such Chapel, the waiting room and the symbolic subscribing the solemnization register.

11. Completely avoided by the Counsel for the New York Civil Liberties Union is the fact that the solemnization mandated by the Domestic Relations Law (§12) calls for the parties "to solemnly" declare in the presence of the officiant and witnesses in that they "take each other as husband and wife". The solemn responses to the solemn questions call for the City Clerk or his solemnizing agent to be appropriately dressed for solemnization purposes. There would be a public protest should the two women Deputy City Clerks in the Bronx and Staten Island be dressed in the Chapels in The City of New York in jeans pajamas, pants suits with matching blouses, and the like (whether purchased in Kleins, Saks Fifth Avenue, or Amsterdam). Their pants suits showing their 'life style' and 'equality' with the plaintiffs' claimed "rights".

12. The sponsors of the Homosexual anti-discrimination bill recently introduced in the City Council seeking the expansion of rights for homosexuals, in their quest for favorable acceptance of the proposal inserted the following

clause: "nothing in this definition shall be construed to bear upon standards of attire or dress codes." The adoption, by these dedicated sponsors, of a dress code limitation to the expansion of sexual orientation rights, shows how essential to the community is, that at least, that sex be easily identifiable.

13. When a Judge recently inquired about the same subject of attire, I wrote amongstother matters:

> "I assume in Court presiding at a Criminal or Civil trial you wear a judicial robe - it lends dignity and decorum to the serious business of justice. The Civil practice rules do not prescribe such attire. Do women lawyers as defense or prosecuting attorneys appear in slacks before the Court, juries and in the Appellate Courts?
>
> We both desire to serve and give this City the best image of our trust. You symbolize justice and equality under the law - I wish to impart to the couples, solemnity, rites and ceremony when they enter into marital status, a serious community interest - which is mandated, and notwrthin my discretion - nor for that matter yours.
>
> Any more writing will confuse the issues. Why can't you phone me and drop in at any time at my Municipal Building Office and discuss these matters. I think that I can convince you that I am not at all "bad"."

14. In 1933 New York State abolished Common-Law Marriages and mandated two vital acts (1) formal application for a marriage license, to be followed by (2) formal solemnization by clergymen, judges and City Clerks, recognized Community Leaders... The Civil Liberties Union knows that there are many men and women living together who have chosen not to be married pursuant to the Domestic Relations Law so they could act out their own individual and independent political life

styles. The Law does not make these Common-Law, co-living men and women criminals or vicious persons. The State declares simply that all the legal attributes of matrimony and marital status, is not present or available in these Common-Law combinations. The incident which converts a Common-Law arrangement into a valid recognized matrimonial status is not simply a license to be married, but the subsequent solemnization. The Federal Courts have required each State to recognize the idiosyncrasies of the solemnization laws of the other States. Should the Federal Court sitting in New York reject the components of solemnization mandated by its own domicile State?

15. In preparing the original complaint named as plaintiffs were, one Susan Bilton and another Walter Lyczkowski,—under the fantastic premise that neither the groom had a tie or coat nor the bride had a skirt required by the City Clerk. It was quickly realized that any such unreal and silly premise would be laughed out of Court. Hurriedly drivers were changed into those who seek hypothetical dress equality. The amended complaint have plaintiffs present the hypothetical issue of similar dress, under the guise of "equality". In this instance both wish to wear pants, the next plaintiffs will want acceptance of them both in skirts or in shorts in Chapel solemnization rites.

16. The Rooms in which these solemnizations take place are described as Chapels not Supermarket Register Counters for the registry of symbolic political positions. Will plaintiffs now call upon me to remove these signs!

17. Defendant respectfully submits that there are other facts, law and history, that can be submitted in

support of defendant's motion for summary judgment. I assume that I have outlined the most cogent ones.

18. I do not question or doubt the sincerity of the "equality" symbols that plaintiffs wish to "convey" at their marriage rites—assuming that the City's Chapels are the appropriate forum or place--which intrusion I reject. I respectfully ask this Court also to reject, the notion that marriage solemnization is vehicle for such exhibition.

There is no "restraint" whatsoever for them to select or have selected a willing officiant—judge or clergyman who might join them in their protest, mission or view. I reserve the right as a City Administrator, and as the City's standard-bearer of solemnization, to refuse to participate —the same choice what the clergymen or judges have.

For the reasons, set forth above and in the memorandum of law, defendant respectfully requests summary judgment dismissing this proceeding and denying plaintiffs quest for summary judgment.

Sworn to before me this
27th day of August, 1974

Irwin L. Kerzog

IRWIN L. KERZOG
Commissioner of Deeds
City of New York
2-7057
Cert. filed in N. Y. County
Commission Expires M. L. 1974

Herman Katz

HERMAN KATZ

A127

THE CITY OF NEW YORK
OFFICE OF THE CITY CLERK
MUNICIPAL BUILDING
NEW YORK 7, N. Y.

ERMAN KATZ
CITY CLERK, CLERK OF THE COUNCIL

October 8, 1969

Mr. Sheldon Ackley
Chairman
New York Civil
Liberties Union
156 Fifth Avenue
New York, N.Y. 10010

Dear Mr. Ackley:

Your October 6th Eve Cary, Legal Assistant letter, refers to a "complaint" you received concerning our minimum sartorial requirement for persons to be married at the borough offices of this agency. It would have been most appropriate for your writer to send me an exact complete photostatic copy of the "complaint." I would be in the best position to evaluate your problem. At this time, however, I am waiving a view of such copy.

You inquire whether it is a regulation. It is. I am enclosing a copy of the "slip" we give applicants concerning this subject. The Domestic Relations Law refers to our activity as a "solemnination." There is also reference in the statutory form to the "rites of matrimony." In my opinion, there can be no "solemnization" unless the parties are decorously and appropriately attired for the occasion.

We have fixed as a minimum requirement, for the groom to wear a coat and tie and the bride a dress or a skirt and blouse. If the groom appears with a turtleneck shirt we do not require a tie, provided he has a coat. We will not solemnize a marriage where the groom is in an undershirt or an uncovered shirt. Traditionally a bride appears to take her marriage vows in a skirt, not slacks. We have coats, ties, and even rings for those who request their use at these mutual exchange of promises.

I trust this answers your inquiry. If it does not, you may phone 566-3298 and arrange a convenient time for your Executive Assistant to drop in and see me to discuss it.

Very truly yours,

Herman Katz
City Clerk

Enc.

A128

 NY Post January 21, 1979



Harriet Van Horne

THE NUISANCE SUIT

Perhaps one shouldn't separate them, but I find myself growing more in favor of women's rights and more repelled by the "liberating" effects of the sexual revolution.

Though I often feel I've been granted more rights than I'll ever use, it shames me to think of all the women who are relegated to "lesser vessel" status simply because they're female. It's cruel and stupid and terribly wrong. And all women who have a soap box, a typewriter or a carrying voice should protest until these ancient wrongs are rendered right.

* * *

The sexual revolution may be viewed as social progress if one sees it in terms of more civilized divorce courts, legalized abortion and rape laws that do not assume every woman a Jezebel. It is also reassuring to know that women of all sorts are finally achieving a conjugal status somewhat above the old Locksley Hall level. (That is, ". . . something better than his dog, a little dearer than his horse.")

But the sexual revolution has caused some women to become a little drunk with their own perfume. There has been a regrettable loss of decorum, mystery and good manners. Too many women dress like farm hands, use foul language and carry on a campaign of symbolic male castration—all under the banner of Liberation Now.

It must be conceded that a certain militance is essential if the women's movement is to succeed. But too many women are exhibitionists rather than activists. They flaunt their sexuality, their release from old taboos, including some sane taboos even primitive societies respect.

No woman is serving the cause of liberation when she publicizes her random copulations, invades men's bars, clubs and rest rooms and trivializes the legal process with nuisance suits.

And that last point brings me to the case of Ms. Doreen Rappaport. Now, this young woman is suing New York City because she was not allowed to be married in a pants suit last autumn in the Municipal Chapel. That Ms. Rappaport's pants were velvet and allegedly from Paris is beside the point.

If the lady wins her suit, she will encourage a throng of girls to regard the marriage ceremony as of no more consequence than a visit to the supermarket. Blue jeans, baggy corduroys and those ghastly cuffed tweeds that extend a full foot beyond the toe will go into the scrapbooks as "Mommy's wedding ensemble." Confused clerks will be opening the ceremony with, "Now, which one of you is the bride?"

The license bureau director who ruled that brides must wear dresses (and bridegrooms shirts and ties) strikes me as a decent, valuable citizen. I recall reading an interview with him sometime ago and thinking how splendid it was, in these sleazy times, that somebody in authority felt sufficiently sentimental about the marriage rites to insist on a few amenities.

Ms. Rappaport's pants suit, which she modeled for the press, may be chic and well-cut but it is man-tailored and worn with an open-necked shirt. Not precisely bridal, not flattering, and certainly not worth going to court about.

I'm not unmindful of the new vogue in weddings, with barefoot brides and everybody throwing wild flowers and noshing pot as the bridal feast—groats and yoghurt, with exotic turnips on the side — bubbles in an iron cauldron. Ah, the purity, the ecstasy of it all!

In her marvelously witty book, "The Eternal Bliss Machine," Marcia Seligson gives a tongue-in-cheek description of a liberated wedding. One paragraph runs: "As the couple, clad in matching black leather jumpsuits, marched down the aisle, a contemporary musical group, The Dope Fiends, played the theme from 'Hell's Angels Strike Again'."

Now, this is a far cry from a velvet trouser suit at the Municipal Chapel. But the right to be indecorous, call it personal freedom or what you will, is not sacred. To ignore a convention designed to bring a touch of grace to ceremonies that are often shabby, pathetic and mindless is to be extremely selfish. Ms. Rappaport's suit, even if she wins, will represent no triumph for the women's movement, only for bad taste.

* * *

If Ms. Rappaport wishes to strike a blow for women's rights, let her help the women who are suing (in five states) to sell their property without their husband's permission. Let her join the fight for new, equitable standards for women seeking credit cards, insurance, nighttime jobs. In five states women cannot start an independent business without the approval of the court or their husband. Women are still paid less than men for equal work and they still enter graduate schools under a quota system.

Sue in a worthy cause, Miz Rappaport, and we'll all cheer you on. Sue for the right to be married in a ridiculous pair of pants and you're just another nuisance.

A130

Nixon Court Gives a Conservative Ruling on the Laws of Fashion and Decorum

By WARREN WEAVER Jr.

Special to The New York Times

WASHINGTON, March 10—The Supreme Court that President Nixon has retailored along more conservative lines is asserting a cautious traditionalism on sartorial as well as legal issues.

As a result, when lawyers arguing cases before the Justices show their colors in the august courtroom, those colors had better be black and gray or possibly a very dark blue. No exception is noted for women lawyers.

Under the leadership of Chief Justice Warren E. Burger, who regards dress and decorum as seriously as he does the complex problems of the law, the high court has quietly established a new requirement for lawyers appearing before it: "Conservative business dress."

Like many of the Court's more significant pronouncements, this standard may require considerable interpretation, a case-by-case analysis of what legal attire is admissible in the courtroom and what is not before its long-range implications are entirely clear.

Formal-Wear Guidline

Until this year, the brief printed guidelines for lawyers preparing to argue before the high court dealt only with how those who chose to should dress formally—strict adherence to the cutaway and striped trousers outfit — rather than with how they should not dress informally.

"Formal attire is not required," the old rules read, "but if it is worn, it should conform with custom in all respects."

This was reportedly a reaction to dismay expressed by Chief Justice Burger when a lawyer rose to plead his case wearing a pearl-gray vest under his morning coat instead of the traditional dark one.

That reaction may have cooled however, for the new instructions issued by Michael Rodak Jr., Clerk of the Court, merely require that formal attire "should conform with custom," dropping the phrase "in all respects."

The new policy line—"appropriate attire for counsel is conservative business dress"—appears, in the absence of any official commentary, to ban lawyers who wear sport coats, flashy patterned suits, aggressively vivid neckties and perhaps colored rather than white shirts.

Last November, when word of the proposed new dress code first reached the outside world, it was predicted that Mr. Rodak's revised rules would specify dark suits, matching vests and quiet ties for the men, and tailored suits and white blouses for the women.

Pantsuits Not Welcome

At the very least, the new edict was expected to make it clear that women lawyers arguing before the Court would not be welcomed in pantsuits or sweaters. But the final language only implies such limits.

The most strenuous recent effort to dress up to Supreme Court standards was made by Deputy Solicitor General Jewel Lafontant, who appeared in a woman's version of a cutaway, a white ruffled blouse and striped skirt.

The new code for lawyers appearing before the Court includes the following rules of conduct:

¶Lawyers who wished to bring briefcases into the courtroom must get identification cards from the Deputy Clerk in advance.

¶Lawyers who are being questioned from the bench when the red light signals the end of their time do not have to break off abruptly but may complete their answer.

¶Lawyers should speak into the microphone at all times, to insure their audibility for both justice and recording purposes.

Dropped from the old regulations were a request that lawyers with hard-to-pronounce names provide the Court with a phonetic version and a statement that dividing the argument of one side of a case between two lawyers was "not favored."

An effort is also being made to make the schedule of arguments before the Court more predictable. The old rules announce bluntly that "cases are not assigned for a day certain" and may not be reached until the day after the Clerk notifies lawyers to be prepared and on hand.

The new rules specify that the Clerk will give lawyers notice of a day for argument when the case is "usual[illegible]ord" because "every effort is made to reach cases on the assigned day."

EXHIBIT C

[illegible] Columbus, Albany, 12226

A-131

New York Times, Friday, April 5, 1974

family food fashions furnishings

Room 257 Changes Their Lives Quickly, For Better or Worse

By JUDY KLEMESRUD

The morning broke gray and soggy and dismal yesterday, but to many of the couples in Room 257 of the Municipal Building, it was still the Day of the Year.

Room 257, you see, is the wedding chapel, the place where couples go when they are getting married in "City Hall." Only, of course, it is not City Hall, but the mammoth old Municipal Building, at Centre and Chambers Streets.

It is a place where the usual wedding pizazz has been stripped to the bare bones. There is no organ music, few long white gowns, and the throwing of rice is discouraged for fear people will slip and conk their heads on the marble floors. The civil ceremony, in which the bride and groom promise to love, honor and cherish," but not obey, each other, lasts less than two minutes.

Still, an average of 40 couples a day tie the knot here, and about one-fourth of all weddings performed in the city take place either here or in one of the other four municipal wedding chapels, one each in the Bronx, Brooklyn, Queens and Staten Island.

And so, here is a typical day at the Manhattan marriage chapel:

It is 9:30 A.M., and Joseph Egelski, a 58-year-old Manhattan truck driver, is fidgeting in the chapel's waiting room, next to his nervous bride-to-be, Madeline Villano, 41:

"We've been hesitating on account of money," Mr. Egelski said. "We didn't have any. Finally I said to her, 'If you're not afraid to take a chance, O.K.'"

One-Day Honeymoon

At 9:38 A.M., they became the first wedded couple of the day. It was the first marriage for both. ("I guess I was in the Navy too long," he explained.) She wore a fuchsia chiffon short dress with a matching rose in her dark hair; he wore a dark suit that was too big for him.

A honeymoon? "We've only got one day," he said, adding that they would probably see the movie, "Serpico," and then dine at a restaurant in their West Side neighborhood.

The marriage procedure goes something like this: A couple walks into Room 257 and presents their marriage license to Joseph Garibaldi, a clerk in the City Clerk's office. They sign their names in an official looking book, and Mr. Garibaldi fills out a marriage certificate. He also asks them for the $3 fee.

Next, the couple is ushered into a small adjoining chapel, which is cool and dark, with bright green carpeting and a narrow stained glass window depicting, among other things, a white dove with two golden wedding bands in its mouth. There, the couple is married by Frank O'Neill, also a clerk in the City Clerk's office, who stands behind a brown podium.

Mr. O'Neill, who has sad blue eyes and a full head of silvery hair, reads the ceremony in a slightly bored [illegible] as though he has performed it hundreds of times in the last four years, which he has. He ends by wishing the couple "good luck, good health and God bless you."

Which couple stands out the most in his mind? "The one that came back an hour after the wedding and said, 'Can we rip up our marriage certificate?'" Mr. O'Neill said. "Both of them were crying."

Yesterday, a total of 20 couples were married by the end of the two daily sessions, one from 9:30 to 11:30 A.M., the other from 1 to 3:30 P.M. (On Wednesdays, the afternoon session is extended until 6:30 P.M.).

Variety of Attitudes

Some of them came bouncing into Room 257 full of smiles and eager excitement and good cheer; others strolled in nonchalantly. Still others looked surly, as though they were there against their will. At least three brides-to-be were noticeably pregnant.

Several couples refused to talk about themselves or their wedding, including a bride who was dressed in black.

A number of the couples were from foreign countries and said they were getting married either so they could stay in the United States longer, or because immigration officials had advised them to get married for other reasons.

"If we didn't get married, she'd have to be out of the country by Monday," said William Richard Creer, a 27-year-old computer programer from London, who is in New York for 18 months as part of a cultural exchange program. His bride, Mary Clare Carr, 26, also of London, came with him to this country as a visitor.

Two couples were turned away because the woman was wearing pants. This rule, that a bride must wear a dress or skirt and blouse, is currently being challenged in court by a young woman who felt insulted that her velvet pants suit was not considered suitable wedding attire.

Bridegrooms must wear a shirt, coat and tie, but when Pirach Somsakul, a 25-year-old student from Thailand, showed up without a jacket, Mr. Garibaldi pulled a brown velvet "house jacket" out of a file cabinet and loaned it to Mr. Somsakul, who good-naturedly put it on.

Distressed by Outfits

One young bride-to-be who arrived wearing pants was fortunate that her sister was wearing a dress. The two repaired to the rest room and exchanged clothing, and the wedding was performed as planned.

"You ought to sit here and see the way some of these people dress," said Mr. Garibaldi, who runs a tight ship. "Shorts. Overalls. You call that marriage? To me, marriage is a sacred thing, something you supposedly do once in a lifetime."

At one point, during a lull in the ceremonies, First Deputy City Clerk Thomas A. Lenane showed a visitor some figures that indicated that all those people who have been predicting an end to the institution of marriage might be wrong. The institution is just sagging a bit, that's all.

In 1940, he said, 80,000 marriage licenses were issued in New York City, in 1950, 83,000; in 1960, 65,000; in 1970, 77,000; in 1971, 76,500; 1972, 75,500; 1973, 72,500. The biggest drop came in the early 1960's, he said, when the number slipped below 70,000 for the first time in a half-century.

'So Much Simpler'

Yesterday's couples gave various reasons why they decided to get married in the municipal wedding chapel: It was quick, it was cheap, it was easy.

But why get married at all? The stylish thing among today's young couples is supposed to be living together in single bliss.

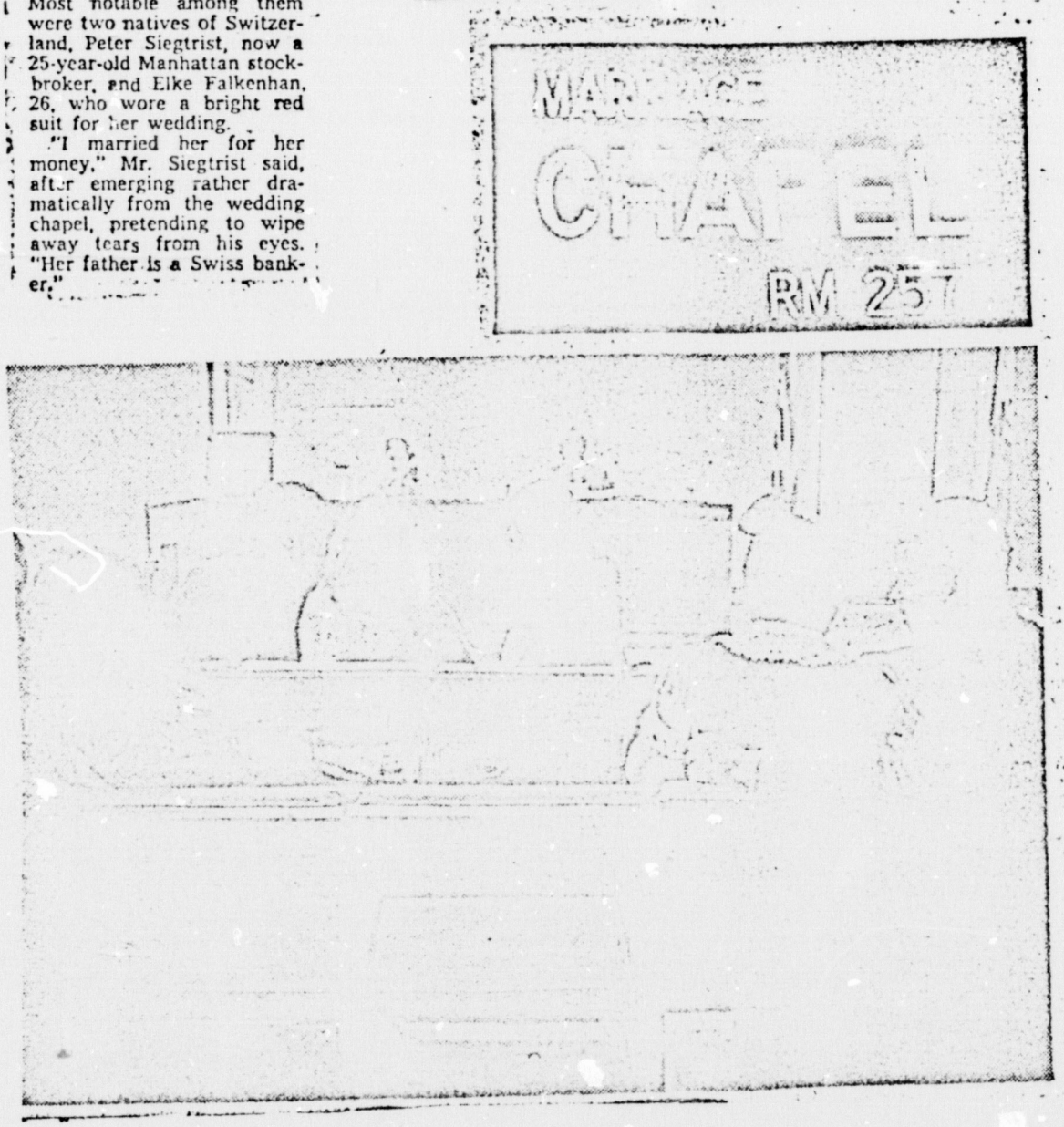
"I don't believe in this new revolution thing," Corporal Edwin Echevarria, 21, of the Marine Corps said firmly. "I believe that if you love someone and want to get married, you ought to do it legally."

His bride, Carmen Diaz, 19, whose fingernails were painted green to match her mini-wedding dress, nodded vigorously.

A132

Many of the couples had a cocky, devil-may-care attitude on their wedding day. Most notable among them were two natives of Switzerland, Peter Siegtrist, now a 25-year-old Manhattan stockbroker, and Elke Falkenhan, 26, who wore a bright red suit for her wedding.

"I married her for her money," Mr. Siegtrist said, after emerging rather dramatically from the wedding chapel, pretending to wipe away tears from his eyes. "Her father is a Swiss banker."



A133



Photographs for The New York Times by PAUL HOSEFR

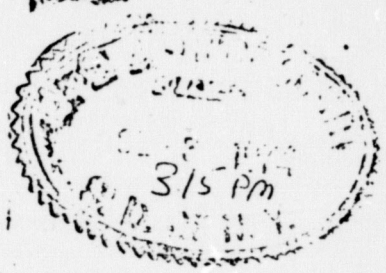
At marriage chapel in the Municipal Building, couples sign in, wait a while, and then are pronounced man and wife, by Frank O'Neill, a clerk in the C Clerk's office. About 40 couples get married each day in the chapel, which is not, as many people think, in City Hall.

14134

Copy

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK



DOREEN RAPPAPORT, DESMOND CALLAN, M.D., CAROLA DIBBELL and ROBERT CHRISTGAU for themselves and all others similarly situated,	:	
Plaintiffs,	:	74 Civ. 287 (MP)
v.	:	
HERMAN KATZ, individually and as Clerk of the City of New York,	:	#41134
Defendant.	:	

OPINION

APPEARANCES:

NEW YORK CIVIL LIBERTIES UNION
Attorneys for Plaintiffs
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New York, N.Y. 10011
By: Eve Cary, Bruce J. Ennis, Esq. of Counsel.

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MILTON POLLACK, U.S. District Judge.

MILTON POLLACK, District Judge.

This is an attempted federal suit against the City Clerk of the City of New York, cast in the mold of a suit for violation of Civil Rights, 42 U.S.C. §1983 seeking an injunction and damages. Both sides have moved for summary judgment. The defendant's motion will be granted and the complaint will be dismissed.

The plaintiffs are two couples, one having been married by the defendant City Clerk on November 2, 1973 and one who has been planning marriage and is looking forward to a ceremony to be performed by the City Clerk. They complain that they were subjected (or are to be subjected) to dress guidelines promulgated by the City Clerk to be observed for wedding ceremonies at City Hall, including the exchange of a ring or rings. These guidelines are said to deprive them of due process of law in violation of their constitutional rights. On oral argument, plaintiffs' counsel said that plaintiffs were not now claiming any violation of First Amendment rights.

The questioned guidelines are customarily handed to persons when they receive their marriage licenses if they request the City Clerk or his deputy to officiate at the wedding. Among other things the guidelines say that:

> 9) Every couple should be properly attired, the bride must wear a dress or skirt and blouse -- no slacks -- and the groom must wear a coat and tie.
>
> 10) One or two rings must be exchanged.

An office policy accepts in lieu of a tie, a turtleneck shirt or other shirts or jackets that do not require a tie. The ring requirement may be satisfied by the exchange of any other tangible item; the plaintiffs are not pressing any claim herein in regard to this requirement or its substitutes.

Plaintiff Rappaport wished to wear pants to her wedding but was told to present herself in a skirt. She did, but was unhappy that she did not wear her green velvet pants suit for her wedding. Plaintiff Dibbell states that she wishes to wear pants to her wedding, and she and her intended spouse say they do not wish to exchange either one or two rings as part of their wedding ceremony. The couple to be married are a free lance journalist and a music critic. The bride-to-be says: "I find dressing

in pants ... protects me from much of the sex-role stereotyping to which women continue to be subjected both professionally and socially." The groom-to-be says: "Because marriage has traditionally been an unequal yoke, it is essential to me that my marriage ceremony emphasize the equality of the partnership. For this reason, our dress at this ceremony must be virtually identical." The plaintiffs charge that defendant's guidelines put them to the choice between their statutory right to be married by the City Clerk and their fundamental right to marry free of unwarranted governmental intrusion on their privacy and with free expression.

The state statute, Dom. Rel. L. §11-a, imposes on the New York City Clerk the duty to solemnize marriages when so requested:

> Whenever persons to whom the city clerk of any such city of the first class shall have issued a marriage license shall request him to solemnize the rites of matrimony between them and present to him such license it shall be the duty of such clerk, either in person or by one of his deputies or the permanent members of his staff so designated by him to solemnize such marriage;

The City Clerk draws attention to the word "solemnize" repeated in the statute from which he infers a duty to conduct

a solemn, not a frivolous occasion. In his answer to the complaint he sets out the following factual background of marriage solemnization in his offices. He asserts that the City of New York has spent hundreds of thousands of dollars in decorating and maintaining appropriately, separate chapels for such solemnizations in each of the five boroughs of the City, in keeping with the solemnity attached to the nature of the marriage obligations publicly assumed by every couple in said chapels. During the last six decades, he says, couples who sought the solemnization service of the City Clerk invariably appeared in appropriate clothes for this single most important event in their lives. They appeared in coat and tie, skirt and blouse, with rings or other tokens of exchange for the declaration of their vows of marriage. Many appeared with formal bridal gowns and tuxedos and with flowers and bridal attendants in formal attire. No rules were published. It was assumed that all would appear appropriately attired. The Clerk believes that in those years it would have been presumptuous to advise citizens of New York of the commonly accepted details of wedding clothes or attire.

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The Clerk asserts that between the years 1960 and 1964 a scattering of couples appeared for marriage rites without ties or coats, open chested, zippered jackets and sweaters, nondescript and dirty pants; brides in colored loose pajama outfits with no blouse and with only a halter, jeans marked with graffiti in front and rear, shredded cuffs on their denim pants, spotted slacks, plaid trousers, shorts and other nondescript apparel and without rings. When the City Clerk and his staff remonstrated with such men and women that their clothes indicated an absence of respect and recognition of their proposed new family status, the reply was that no one ever advised them of what would be proper. Consequently, in about 1965, the City Clerk for the first time, prepared simple and practical guidelines of a number of matters, including what would be considered accepted attire when the City Clerk was called upon to participate in and perform his role in the solemnization of marriage. In 1973 the offices of the City Clerk solemnized twenty thousand marriages out of the seventy-two thousand licenses issued. For the very few who sometimes for whatever reasons had forgotten, overlooked or been neglectful of

the guidelines for dress [illegible], each of the Chapels was provided with coats, [illegible] rings, for use of the parties at such ceremonies. Apparently, experience teaches that women prefer to use their own skirts and they wear or bring them for the occasion, so no supply of spares of these is kept on hand by the Clerk.

Couples who select their special ethnic, ancestral or national dress in which to be married, such as a dashiki, a kimona with obi or a cheongsam, or service persons in uniform, are served and have been served by the City Clerk as being attired consonantly with the coat, tie, skirt and blouse and dress guidelines.

The Clerk calls attention to the alternative provided by the state legislature for those who resent or object to furthering the solemnity of the occasion by the suggested manner of their dress at the "solemnization" by the Clerk. That alternative gives those who are irked, the opportunity devoid of any particular decorum, to enter into a valid marriage merely by the signature at any place, in any mode of attire or the lack of it, of a contract of marriage. Dom. R. L. §11-(4).

The defendant Clerk contends that any issues respecting form, ritual, conduct and detail by officiants selected by the state to perform solemnizations and rites of matrimony are either not within the jurisdiction of the federal courts or at least should not be accepted by federal courts for determination. He contends that such issues are significantly local in character and should be reserved to the state and to the local communities within the state.

And further, he contends that if there is an abuse of discretion by the City Clerk, since he is a public officer of The City of New York, the Council of the City of New York could by its resolution direct the City Clerk to accept 'pants' in all its cult phases and request him to cancel his guideline. He says that the controversy attempted to be generated herein is a community matter and should be determined by community self-interest.

The plaintiffs recognize that the state has a substantial interest in assuring that couples married by the City Clerk fully comprehend the commitment they are making but they assert on the other hand that the guideline is unrelated to and unconnected with the proper performance

of the Clerk's duties and is devoid of any justification therefor. The Clerk puts this in issue and claims that there is a connection with and relation to his statutory function as he understands it and its purposes.

The United States Constitution and Statutes do not expressly or out of any necessity impose on the federal courts the duty and responsibility of supervising the mode of dress in which an intended groom and bride may take their marriage vows in the office of the City Clerk of The City of New York.

Touching on the underlying concept of federal-state relationships the late Mr. Justice Black as Circuit Justice denied a motion to vacate a Court of Appeals stay of a district court's injunction, in the following significant language in Karr v. Schmidt at 401 U.S. 1201 (1971):

> The records of the federal courts, including ours, show a heavy burden of litigation in connection with cases of great importance -- the kind of litigation our courts must be able to handle if they are to perform their responsibility to our society. Moreover, our Constitution has sought to distribute the powers of government in this Nation between the United States and the States. Surely the federal judiciary can perform no greater service to the Nation than to leave the States unhampered in the performance of their purely local affairs. Surely few policies can be

> thought of that States are more capable of deciding than the length of the hair of schoolboys. There can, of course, be honest differences of opinion as to whether any government, state or federal, should as a matter of public policy regulate the length of haircuts, but it would be difficult to prove by reason, logic, or common sense that the federal judiciary is more competent to deal with hair length than are the local school authorities and state legislatures of all our 50 States. Perhaps if the courts will leave the States free to perform their own constitutional duties they will at least be able successfully to regulate the length of hair their public school students can wear. (p. 1203)

While diverse views have been expressed in other long hair cases, the concept of Mr. Justice Black's opinion remains valid.

In a similar vein, Judge Breitenstein, writing in Freeman v. Flake for the Tenth Circuit, 448 F.2d 258 (1971) said:

> The remedy provided by §1983 is supplementary to any pertinent state remedy. See Monroe v. Pape, 365 U.S. 167, 183, 81 S.Ct. 473, 5 L.Ed. 2d 492. The proliferation of litigation resulting from the expanded use of §1983 is apparent to anyone familiar with the reported decisions of the courts of the United States. The existence of the §1983 remedy does not require that federal courts entertain all suits in which unconstitutional deprivations are asserted. A federal constitutional question must exist 'not in mere form, but in substance, and not in mere assertion, but in essence and effect.' Cuyahoga River Power Co. v. Northern Ohio Traction & Light Co., 252 U.S. 388, 397, 40 S.Ct. 404, 408, 64 L.Ed. 626. (Emphasis Supplied).

Alberda v. Noell, 322 F. Supp. 1379 (D.C. E.D. Mich. 1971) tersely expressed a view apposite herein:

> We must do more than wring our hands when we on the federal bench are imposed upon to entertain cases best left to the states.... It is time that the public, litigants and counsel be disabused of the notion, currently enjoying great favor, that a federal court is the only court in which federally guaranteed rights can or should be enforced.

See generally H. Hart, The Relations Between State and Federal Law, 54 Colum. L. Rev. 489, 498 (1954).

The ruling herein, dismissing this suit, is not based upon or any reflection upon the merit of this complaint or the alleged justification for such guidelines and their relation to the statutory command to the Clerk -- those have not been considered. While federal courts have accepted the case of a policeman's beard because "choice of personal appearance is an ingredient of an individual's personal liberty, and that any restriction on that right must be justified by a legitimate state interest reasonably related to the regulation", Dwen v. Barry, 483 F.2d 1126, 1130 (2d Cir. 1973), it does not seem to this Court that the institutional cases, the school and police cases, reach to the extent of federal cognizance of

marriage decorum in City Halls.

The threshold question here presented and decided is not the merit of the clothes guideline, but whether the federal courts should supervise marriage forms and procedures in City Clerk's offices. A line for acceptable issues must be drawn somewhere. The defendant's is a locally prescribed and directed function in an area fundamentally of state concern. Plaintiffs concede that some decorum is appropriate but draw the line at skirts, an accoutrement of diminishing use for many. Non constat, the forms and the degree of decorum at weddings in the City Clerk's office do not sufficiently justify provoking a federal-state conflict. Federal judges have too much to do to become involved in this type of dispute which is best and most appropriately resolved by the State of New York and the New York City Council to whom the defendant is responsible. This is a class of case where, certainly, "the state tribunals will afford full justice, subject, of course, to Supreme Court review."
H. J. Friendly, FEDERAL JURISDICTION: A GENERAL VIEW (1973) p.95.

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Complaint dismissed.

SO ORDERED.

September 3, 1974

Milton Pollack
U.S. District Judge.

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UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

DOREEN RAPPAPORT, DESMOND CALLAN, M.D., CAROLA DIBBELL and RIBERT CHRISTGAU, Plaintiffs, -against- HERMAN KATZ, individually and as Clerk of the City of New York, Defendant.	NOTICE OF APPEAL 74 Civil 287 Judge Pollack

Plaintiffs hereby appeal to the United States Court of Appeals for the Second Circuit from the orders of this Court (Pollack, J.) denying plaintiffs' motion to have this action declared a class action, entered May 13th, 1974, and granting defendant's motion for summary judgment, entered on the 5th day of September, 1974.

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Dated:

New York, New York
September 9, 1974

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